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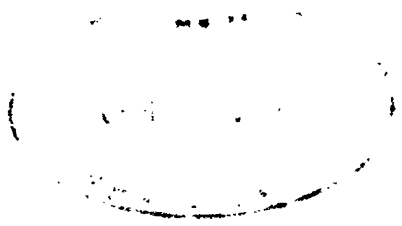

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Dedicated

To the Memory of

F. H. R.,

THE SPRING OF MY EVERY EFFORT AND THE SOURCE

OF MY EVERY HOPE

FOR THE LAST TWENTY YEARS,

KILLED WHILST IN COMMAND OF A

COMPANY OF THE KING'S ROYAL RIFLES

IN THE ADVANCED LINE OF DEFENCE

ON WAGON HILL

AT LADYSMITH,

SOUTH AFRICA,

WHEN SUCCESSFULLY REPELLING THE

ASSAULT OF THE ENEMY

ON THE MORNING OF THE EPIPHANY, 1900,

AGED TWENTY YEARS.

"Who is the *Happy Warrior*? Who is He
Whom every man in arms should wish to be?
It is the generous spirit who, when brought
Among the tasks of real life, hath wrought
Upon the plan that pleased his boyish thought."

INTRODUCTION.

In publishing this, the third volume and fifth Code, I can but refer to the introductions to the former ones, Spain and Portugal which appeared in 1896, and Holland and Belgium in 1898.

The Maritime Law of Italy, as is fitting in a State of which Rome, the mother of the law of modern continental Europe and, so to speak, the step-mother of English law, is the capital, is more comprehensive than that of the States before dealt with, including, as it does, a Code of Maritime Law in time of war, and, therefore, has a volume to itself; the notes are also somewhat fuller than those to the Codes previously published, there being a large number of legal journals or series of reports published in different parts of the peninsula which are fairly accessible.

The main difficulty is that, though the Codes of which translations are here given are identical for the whole country, each of the several States which were in existence before the Unification of Italy has still its own legal hierarchy. The Supreme Court is very rarely used, and therefore practically instead of there being one Final Court of Appeal or Cassation for the whole country, as in other European States, or even two as at present in the British Empire,—the House of Lords for Great Britain and Ireland, and the Privy Council for the Colonial Empire,—there are several, amongst which may be mentioned Turin for the former kingdom of Sardinia, Florence for the Duchy of Parma, Rome for the States of the Church and the Marches, and Naples for the kingdom of the

Two Sicilies, and as the interpretation put upon the law by one of these courts does not bind the others they are sometimes found to be in actual conflict, and it is never safe to rely on a decision, except in the place where it has been given; it has, therefore, been necessary as a rule to give the name of the place where cases were decided, as well as a reference to the report in which it appears.

I have again to repeat the thanks that I, in common with all interested in International Maritime Law, owe to M. F. C. Autrun, the talented Editor of the *Revue Internationale du Droit Maritime*, whose work has from its accuracy and completeness rendered mine a comparatively easy one, and also to the Editors of the *Journal du Droit Internationale Privé*, and also to the Professors of Law, Signors P. Cogliolo and A. Sraffa, for their commentaries on the Codes, published by G. Barbèra at Florence, of which I have largely availed myself. I also desire to thank Mr. Arnold for letting me see the proofs of his translation of the New Maritime Law of the German Empire, which only came into operation on the 1st January, 1900, and which has enabled me to give the cross references to that Code instead of to the one previously in force.

It is impossible probably for any human being to avoid errors both in the actual translation of a foreign language, when one has to seek in many cases for synonyms or paraphrases to convey the idea to an English reader rather than a literal translation, and also in correcting for the press a number of cross references, consisting of letters and figures, with no context to guide the printer, and it is probable that some such may be found, especially as from the nature of the work of a County Court Judge, he has to correct his proofs oftentimes not in the quiet seclusion of a library, but either in his room at the Court House of a country town, with people coming in and out continually, and frequently with the trial of a case interpolated, or in the evenings in a room at an hotel with only such books of reference as his travelling bag can

contain. In the present case, too, the writer has been under the shadow of a sorrow, to which the necessary work of correcting proofs has been in some sort an anodyne, but which probably has injured the work itself, for this he claims indulgence.

He desires at the same time to plead guilty to two offences of the nature described, which have been pointed out to him by kindly critics in the Dutch and Belgium Codes. (1) In the note to Art. 168 of the Belgium Code, at page 168, it is stated that the French Code prohibits, *inter alia*, insurances on profits and freights; this was, in fact, altered by an amendment of the French Code in 1885. The alteration is noticed in the notes to the Spanish and Portuguese Codes, but the original note had slipped through in that of Belgium, as the translation was first made and the notes added prior to 1885. The other (2) is a more serious error, as it occurs in the text of the translation, at page 213, in the rules for the navigation of inland waters, where the meaning of the steam whistle signals, "One short blast" and "Two short blasts" should be transposed. The error is a stupid one, and has arisen either from simple inadvertence, or from carelessly dealing with the text after the continental fashion of giving commands. The order in most foreign countries is, not to a tiller working like that of a boat, but to the ship's head, which, of course, is the exact reverse: you put the helm, or the tiller, to port and the ship's head goes to starboard, and *vice versa*. The fact is perfectly well known to every sailor who enters a foreign port, and certainly to every practitioner in the Admiralty Court, and the present writer would hardly be accused of ignorance in either of those capacities, but he cannot avoid the charge of carelessness, for which he apologises.

F. W. RAIKES.

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ABBREVIATIONS.

B.—Belgium Code of Commerce, Book II. (1875).
E.—Egyptian Code of Maritime Commerce.
F.—French Code of Commerce.
G.—German Mercantile Law, Book IV. (1900).
H.—Commercial Code of Holland.
P.—Commercial Code of Portugal (1889).
R.—Commercial Code of Russia.
S.—Commercial Code of Spain (1886).
Sc.—Maritime Law of Scandinavia (Sweden, Denmark, and Norway), 1892.

In each of the above, figures after the letter denote the number of the article, and if in brackets the year in which the provision referred to amended or altered the Code.

Arn. = Arnould on Marine Insurance, 6th ed.
M. & P. = Maude & Pollock, Merchant Shipping, 2nd ed.
M. S. A. = Merchant Shipping Act.
Macl. = Maclachlan on Merchant Shipping, 2nd ed.
News. = Newson's Digest of Laws of Shipping and Marine Insurance.
Ann. = Annali di Giurisprudenza.
Cons. Com. = Consiglio Commerciale.
C. Sup. = Corte Suprema de Cassazione Sentenze.
D.C. = Diritto Civile.
Eco. Giur. = Eco. Giuridico.
Gass. Proc. = Gazzetta del Procuratore (Naples).
Giur. It. = Giurisprudenza Italiana.
Giur. Pen. = Giurisprudenza Penale.
J.D.I.P. = Journal du Droit Internationale Privé.
Leggi. = Giornale delle Leggi.
Monit. = Monitore delli Leggi.
R.I.D.M. = Revue Internationale du Droit Maritime.
Temi G. = Temi Genovesi (Genoa).
Temi V. = Temi Venezia (Venice).

The references to English and America Law Reports are those in general use.

C. A. = Court of Appeal.
C. C. or C. de C. = Court of Cassation.
Trib. Civ. = Civil Tribunal.
Co. Com. = Code of Commerce.
Co. Civ. = Civil Code.
C. C. Pr. = Code of Civil Procedure.
M. M. C. = Mer. Mar. Code = Mercantile Marine Code.

ADDENDA.

Add note to Art. 611 Co. Com., p. 54, and refer to Art. 431 Co. Com., p. 216.

It is necessary to state in the policy the fact that the voyage has actually commenced, if such is the case, under pain of nullity, but if at the time the contract is made an accident has actually happened of which both parties are in fact ignorant the contract is valid, but the onus of proving such ignorance lies heavily on the assured, there is a strong presumption against it, C.A., Palermo, 9, 6, 99, 15 R.I.D.M. 686.

Add note to Art. 632, p. 61.

In estimating whether a ship has depreciated three-quarters in value, and is therefore a constructive total loss, the expenses of getting her, as well as of repairing her and making her seaworthy, are reckoned, C.C., Turin, 6, 10, 99, 15 R.I.D.M. 690.

Add note to Art. 888, p. 101.

But in Genoa the time only runs from the date at which the decree can be put in force, C.A., Genoa, 6, 9, 99, 15 R.I.D.M. 692.

Add note to Art. 429, p. 215.

The holder of a policy on account of "whom it may concern" is deemed to be the agent of those actually interested, and is not required to show any personal interest, and proceedings instituted by him in due time are available to stop the time for prescription running against all concerned, C.C., Turin, 15, 3, 1900, 15 R.I.D.M. 685.

Add note to Arts. 611 and 431, pp. 51, 216.

Whether silence as to certain circumstances, such as the interest the commander has in the ship, vitiates the policy is a question for the court, on considerating whether the silence really affects the risks, C.C., Turin, 15, 3, 1900, 15 R.I.D.M. 685.

FOREIGN MARITIME LAWS.
ITALY.

THE Maritime Law of Italy consists of two principal parts: (I.) That contained in the Code of Commerce, which came into force on the 1st January, 1883, comprising Book II., and a portion of Book IV., of the Code, besides certain Temporary Provisions attached to it, and an Order for putting it into force; and (II.) The Mercantile Marine Code, which came into force on the 1st January, 1866, and was amended in 1877, and again in 1886.

ITALY: CODE OF COMMERCE, 1883.

BOOK II.

*Maritime Commerce and Navigation.**

TITLE I.

Ships and Shipowners.

ART. 480. Ships are chattels [*beni mobili*]. Boats, rigging, apparel, arms, stores, provisions, and every description of article pertaining to the vessel's permanent equipment are deemed to be parts of the vessel, even though they are temporarily separated from her.

Cf. B. 1, F. 190, S. 573, 576, 585, H. 309, P. 485, E. 4, G. 478.

Macl. 1, 17; Maude and Pollock, 42. The *Dundee*, 1 Hagg. 109; *Gale* v. *Laurie*, 5 B. and C. 156.

481. Contracts for building vessels, and all alterations in, and revocations of, them, as also declarations and transfers of part-ownership of a ship whilst building, whether made by the

* *Cf.* generally *Repertorio di Giurisprudenza Maritima*, by Capt. Guido Lagrio and Camillo Barlberris, Advocate, Genoa. P. Pellas, 1893.

person ordering the vessel, or by a shipbuilder who is building a ship on his own account. ought to be in writing, and are invalid as against third parties if they are not copied into the Official Registers of the Marine Department, where the vessel is built or her building is undertaken.

Cf. P. 489, S. 573, H. 309, G. 475, B. 2.

Macl. Ch. I. *Ex pte. Lambton, in re Lindsay*, L.R. 10 Ch. App. 405. *Barr* v. *Cooper* (Sc.) 2 R. (H.L.) 14.

482. The person who orders a ship [*committente*] may withdraw from the contract either on the ground of the incapability of the shipbuilder to perform it or of his fraud.

With these exceptions the principle laid down in Art. 1,641 of the Civil Code applies.

The shipbuilder [*costruttore*] can only withdraw from the contract on the ground of accident or insuperable obstacle.

In case of the shipbuilder's decease, the contract is determined in accordance with Arts. 1,642 and 1,643 of the Civil Code.

The acceptance of a ship does not free the contractor from his liability to make good defects only discoverable after the ship has been to sea. A contract to build a ship is a contract of work and labour rather than a sale outright. C.C., Turin 22, 4, 96, 12 R.I.D.M. 220. See these Art. (*post*).

483. Every alienation or transfer, whether in whole or in part, of the property in or use of a vessel ought to be in writing, having regard to the regulations of Book IV. of this Code. If the alienation or transfer takes place within the realm, it may be effected either by a notarially certified deed [*atto pubblico*], or by a simple signed agreement [*scrittura privata*] ; but it has no effect as to third parties unless it is copied into the official Maritime Register of the place where the ship is registered.

In foreign countries an alienation should be effected by a deed made in the Chancery of the Royal Consulate before the consular officer, and it has no effect as to third parties unless copied into the Consular Register. The consul should transmit a proper official copy of the deed of alienation to the Maritime Office of the place where the ship is registered.

In all cases the alienation should be entered on the ship's register [*atto di nazionalità*], noting whether the vendor gives credit for the purchase money either in whole or in part.

The Superintendents [*amministratori*] of the mercantile

marine and Consular Officers cannot receive or enter a deed of alienation unless the ship's register is presented, except in the case provided for in Art. 489.

In case of several alienations, their precedence is determined by the respective dates of inscription on the ship's register.

If the transfer is not entered, creditors of the vendor who take mortgages upon it are preferred to the actual purchaser, *Ducci* v. *Vassallo and Another*, 4 R.I.D.M. 343, C.A., Florence; also see C.C., Florence, 2 R.I.D.M. 733. A temporary demise of a ship, which contract is usually called "*Imbrago*" in Italy, is such a matter as is referred to in the first clause, and must therefore be in writing. C.A., Genoa, 4, 3, 87, D.C. 1887, 556.

Cf. B. 2, F. 195 (1885), 7. G. 475, S. 573, 578, H. 309, 310, P. 487, 490, E. 3, R. 166, 167, 168.

M.S.A., 1894, §§ 24-27.

484. Consular officers in foreign countries cannot receive deeds of alienation of vessels, unless provision is made for the payment of, or security given for, privileged debts inscribed on the ship's register.

R. 168.

485. A contract of mortgage [*contratto di pegno*] on a ship or part of a ship, must be in writing.

A mortgage has no effect as to third parties, unless copied into the Official Maritime Register in the place where the vessel is registered, if made within the realm, or into the Register of the Royal Consulate of the place where the vessel is at the time, if made in a foreign country. The consul must at once transmit an official copy of the mortgage contract to the above-named office.

In both cases the mortgage must be entered on the ship's register.

The Superintendents of the mercantile marine and Consular Officers in foreign countries cannot enter the mortgage deed unless the ship's register is produced to them, except in the cases provided for in Arts. 486 and 489. The entry of the mortgage on the ship's register must be noted on the copy of the deed of mortgage.

Cf. B. 135, 139, 142, F. (1885) 2, 6, 8, P. 590.

A foreign mortgage on an Italian ship is valid, Crt. of App., Palermo, 7 R.I.D.M. 707.

M.S.A. 1894, §§ 31-33, Ros. 3, 83; News. 18, 19; M. and P. 55-57.

486. A mortgage on a ship in process of building has no effect as to third parties unless it is copied into the Official Maritime Register of the place where the vessel is being built. When, on the completion of the vessel, she obtains a register, mortgage deeds already on the (Maritime) register must be entered upon it.

If the mortgage is duly inscribed on the register a purchaser of a share in the ship cannot set aside the purchase on the ground that he was not informed of the Mortgage, Arts. 1,110, 1,486, Civ. Code. (C. A., Genoa 17 J.D.I.P. 510). *Cf.* B. 138, F. 1885 (5). P. 590, Sc. 3.

Ros. 84; M. and P. 19 *n*, 54; *Ex pte. Hodgkin*, L.R. 20, Eq. 746.

487. A mortgage of a ship is effective without the necessity of nominating a guardian [*custode*] (*i.e.*, without taking possession).

488. If the mortgage deed is in proper form, its endorsement transfers the debt and all rights pertaining to it.

Cf. B. 144.

M.S.A. 1894, § 37; News. 19; M. and P. 59.

489. If the alienation, transfer, or mortgage of a vessel is effected within the realm, whilst the vessel is on a voyage to a foreign country, it may be agreed to have the entry made on the register of the ship in the Chancery of the Royal Consulate in the place where the ship is or to which she is bound, provided that such place be stated in writing at the same time as the demand for a copy of the title (to be registered). In this case the Superintendent of the mercantile marine must immediately transmit to the Consular Official (at the place) mentioned, at the expense of the person requiring registration, a copy of the title certified [*autenticata*] by himself.

The contract takes effect as to third parties only from the date of entry on the ship's register.

If the vendor does not have the entry made and render accounts for the voyage the purchaser may demand his money back, 9 R.I.D.M. 83, C.A., Genoa.

Cf. S. 578, G. 476.

490. Contracts for building, selling, and mortgaging small craft not intended to go beyond harbours, roadsteads, rivers, canals, or lakes, as well as other vessels not provided with a register, have no effect as to third parties, unless they are copied

into a special register by the authorities and in the forms appointed by Royal Decree.

This article applies to lighters, C.A., Genoa, 8 R.I.D.M. 154.

491. Shipowners are responsible for the acts of the captain and other members of the crew, and are bound by the contracts made by the captain in respect of things concerning the vessel and the voyage. Nevertheless, every owner or co-owner, who has not personally contracted, can in any case free himself from the responsibility and obligations aforesaid, except wages and salaries of the crew, by abandoning the vessel and the freight earned or to be earned.

One who is, at the same time, captain and owner, or part-owner, cannot avail himself of the right to abandon. When the captain is a part-owner only, in default of a special agreement (to the contrary) he is only liable personally on contracts entered into by him in that which concerns the vessel and the voyage in proportion to his interest (in the ship).

"Personally" is equivalent to in person or by an authorised agent other than the master.

In the case of foreign ships the abandonment is regulated by the law of the flag, C.A., Genoa, 10 R.I.D.M. 652, unless in consequence of a collision in Italian waters when Italian law governs, Trib. Civil, Messina, 11 R.I.D.M. 488.

An abandonment of a ship does not include the insurance (*ibid.*).

As to the liability of an agent himself see Arts. 230, 231 and 371, and 2, 7, 97, C.A., Naples, 13 R.I.D.M. 435.

An Italian made a contract with the agent of a French company at Genoa, for carriage of beasts, the owner, having lost the beasts, tried to abandon, but was held liable, the *Ville de Malaga*, 4 R.I.D.M. 337, 16 J.D.I.P. 161.

Shipowners can free themselves from liability for negligence of captain and crew by an exception of such negligence in the bills of lading (2 R.I.D.M. 82, 731, 3 R.I.D.M. 763, C.C., Florence, 3 R.I.D.M. 418, Civ. Trit., Genoa), but not from their own negligence, 2 R.I.D.M. 212, C.C., Palermo, 10 R.I.D.M. 640. See note to Art. 558. But only in respect of matters in which the law (Arts. 401, 404, *post*, and this Art.) allows them to limit their liability; a clause exonerating them from consequences of barratry is invalid, C.A., Genoa, 9 R.I.D.M. 82.

The owner is liable on a B. of L. accepted by the captain for ship's stores in his own name. C.A., Genoa, 9 R.I.D.M. 636.

The owner is not liable for the acts of the crew injuring the captain, as, *e.g.*, the engineer allowing a boiler to burst; C.A., Genoa, 26, 12, 96, 12 R.I.D.M. 593, C.C., Turin, 13 R.I.D.M. 821.

An abandonment to creditors under this article being a voluntary act of the owner not requiring any confirmation by the creditors or the Court operates at once, whereas an abandonment to underwriters, being dependent on acceptance by them or a decision of a Court, does not transfer the property till completed; therefore whilst in the latter case the owner must take all steps necessary to preserve the property (Art. 629), in the former he must be careful to do nothing which may interfere with the free disposal of the ship by the creditors, as, *e.g.*, by raising money on bottomry or mortgage of the ship, and thus creating a new lien or privilege, C.C., Turin 12, 3, 97; 13 R.I.D.M. 214, and a ship may be abandoned to creditors for bottomry effected by the captain notwithstanding a previous abandonment to underwriters, C.C. Florence, 23, 11, 93, 26, J.D.I.P. 192.

A managing owner or ship's husband (*armatore*) is only an agent of the owner, hence if the ship is lost the agency is terminated and the agent's liabilities close, and actions arising out of the default or barratry of the commander must be brought against the owner himself, C.A., Genoa 7, 9, 86; Eco. Giur., 1886, 360; see also 2, 7, 97, C.A., Naples, 13 R.I.D.M. 435. The liability of a shipowner for the acts of the commander is not removed by the fact that the commander was not appointed by him, C.A., Lucca, 1, 5, 88.

Owners are responsible for the ship being inadequately supplied with coal or life-saving apparatus when loss of life ensues on a collision to some extent caused by this defect and also for defective gear causing injury to one of the crew or for defective stowage causing injury to a passenger and this article only applies to contracts by the master, and leaves the owners with unlimited liability for his delicts or *quasi*-delicts, 2, 7, 97, C.A., Naples, 13 R.I.D.M. 435, 27, 2, 99, Naples, 15, R.I.D.M. 249, 16, 3, 99, C.A., Rome, 15, R.I.D.M. 533.

Cf. B. 7, F. 216, G. 485-487, S. 586, 590, 592, 637, H. 321, 322, P. 492 diff., E. 30, Sc. 7, 8, 9, R. 253-255.

M.S.A. 1894, §§ 503-505, 508.

492. Abandonment may be to all creditors or only to some.

The declaration of abandonment must be copied into the official Maritime Registers of the place where the vessel is registered, and the fact notified to creditors whose claims (titles) have been copied into the said registers or noted on the ship's register.

With respect to creditors who have brought an action or obtained a judgment, notice of abandonment must be given through the officer of the Court (*usciere*) at the address for service, or failing that, in the registry of the Tribunal of Commerce, within eight days from the date of the citation or order, on peril of its being set aside.

This article has no counterpart in the other Codes.

When a ship has been sold, either voluntarily or by order of Court, the right to abandon ceases, C.C., Turin, 14 R.I.D.M. 563, and then the owners' liability for a prior collision is unlimited, but not when she has been abandoned to underwriters (see note to Art. 491).

See *Joseph W. Dyer and Others* v. *The National Steamship Co.*, 4 Asp., M.L.C., p. 26, for necessary steps to be taken in the United States, when it is sought to limit liability to the value of the ship, and also U.S. Statute, 26th June, 1884, § 18.

M.S.A. 1894, § 504; Com. Law Proc. Act, 1860, § 35; Ad. Court Act, 1861, § 13.

493. In case of abandonment, any creditor may take the vessel in settlement of his account, on condition that he pays the other privileged creditors. If there are several creditors (who desire to take the ship) preference is given to the first who declares his intention of doing so, and amongst contemporaneous declarations, to the creditor for the largest sum.

If no creditor takes the vessel in settlement of his account, it shall be sold at the request of the creditor who has been most active [*più diligente*] in the matter, the proceeds divided amongst the creditors; and the residue, after payment of the creditors, returned to the owner.

Cf. F. 214.

494. The owner can discharge the captain

In case of discharge, there is no claim for damages unless the right of claiming them has been agreed upon in writing.

If the captain who is discharged is a co-owner of the ship, he can surrender his share to the other co-owners, and require the capital which it represents to be paid over to him

The amount of this capital is ascertained by experts.

If the ship is chartered for an ocean voyage and the commander has only a Home Trade Certificate (Art. 59, M.M.C.) he is *ipso facto* discharged, C.A., Genoa, 25, 2, 78, Giur. It., I. 2, 300. There is no special legal form for the transfer of a commander's shares in such a case, C. de C., Milan, 13 5, 64, Giur. It., 1864, I. 378.

For appointment of experts see Arts. 71, 402 *post.*

Cf. B. 8, 9, F. 218, 219, G. 493, 545-552, S. 597, 606, 607, 603, H. 328, 329, P. 493, 495, § 4 (1), R. 217, 252, E. 32, 33, Sc. 11, 61. See M.M.C., Art. 108 *post.*

Macl. 197; M. and P. 129; News. 113; M.S.A. 1894, § 167.

495. In everything that concerns the mutual interests of the owners of a vessel, the decisions of the majority are binding on the minority.

A majority is constituted by an interest in the vessel exceeding half its value.

The Court must decree a sale by auction [*vendita all' incanto*] of the ship if demanded by such a number of co-owners as, taken together, own at least half of it, unless there is an agreement to the contrary.

If the sale of a ship is required under pressing and serious circumstances touching the interests of all concerned, the Court may decree a sale, although the owners who demand it only represent a quarter of the ship.

Cf. B. 11, F. 220, G. 490-492, S. 589, H. 320, 323-326, 331, 335, 340, 365, 366, P. 495, E. 34, Sc. 12, 13, 22.

The last clause is not found in any of the other Codes. When the shares of several co-owners are not specified, each is the agent for all (see M.M.C. 53), and can even let the ship on hire, and if no majority of interests can be ascertained from confusion of the property it is for the Court to take requisite steps. *Dr. Barbierri* v. *Ricci*, 6 R.I.D.M. 83.

The article being in general terms includes the owners of a harbour tug, C.A., Genoa, 19, 3, 84, D.C. I., 1884, 511. If the managing owner owns more than half the shares the expenses for repairs, etc., are legally binding on the others if they are reasonable, C.A., Genoa, 29, 4, 87, Eco. Giur., 1887, 197. The comparative want of profit is not a "pressing and serious" matter calling for the intervention of the Court, C.A., Lucca, 8, 4, 84, Leggi, 1884, 642. If no majority can be obtained, *i.e.*, if there is a dead lock, the Court may give directions on demand, C.A., Genoa, 28, 2, 90. Temi G., 1890, 208.

The duties of a ship's husband or managing owner are not *ipso facto* terminated by the sale of his shares unless he was only in that position by reason of owning more than half the ship, and so commanding a majority of votes; if he was elected ship's husband he remains so, and is bound to render accounts until he has properly resigned or been discharged from his office, 17, 12, 95, C.A., Genoa, 11 R.I.D.M. 659. If there is a dispute as to the accounts the ship's husband must lodge them in the Registry of the Court together with his vouchers (*ibid.*).

24 Vict., c. 10, § 8. The *Marion*, 10 P.D. 4.

TITLE II.

Of the Commander.

Art. 496. A captain (*capitano*) or master (*padrone*) placed in command of a vessel is responsible for his own defaults, even of a trivial nature, committed in the course of his duty.

The responsibility of the captain in the cases where it is

imposed upon him by the present Code, only ceases on proof of difficulties occasioned by accident, or by circumstances beyond his control (*caso fortuito o forza maggiore*).

The functions of the master and the agent are distinct, and one cannot shelter himself from liability behind the other, C.C., Florence, 5 R.I.D.M. 693, nor can the captain be made liable for the breach of the agent's contract with regard to the ship, C.A., Genoa, 9 R.I.D.M. 630.

The question whether certain circumstances constitute *force majeure* is for the Court of First Instance, and is not subject to appeal, and what they were must be stated explicitly, C.C., Palermo, 8 R.I.D.M. 716.

When a captain has been tried for losing his ship and acquitted no civil action lies against him for damages for the loss, C.C., Palermo, 7 R.I.D.M. 458, 2 R.I.D.M. 730.

A captain is responsible for injuries done by mismanagement in loading cargo, even if the work of loading or discharging is done by a contractor, C.A., Genoa, 9 R.I.D.M. 302, 3 R.I.D.M. 766.

Cf. B. 12, 21, F. 221, 230, G. 511, 512, S. 618, 620, H. 345, 349, P. 496, R. 227, 231, 233, 234, E. 35, 45, Sc. 59. See note to Art. 514 (*post*).

Macl. 172; M. and P. 120; News. 160.

497. A master cannot refuse to load goods, the carriage of which he has undertaken, on the ground that they are not adapted to the hatchways, decks, or stowage of his vessel.

This seems to entail on the captain the obligation of inspecting any unusual goods, such as machinery, etc., before signing a charter party, but see Art. 563 *n*.

R. 338.

Ritchie v. *Anderson*, 10 East, 296; M. and P. 76, 315. *Turnbull* v. *Black*, Hume (Sc.) 300. *Mackill* v. *Wright*, 14 App. Cas. 106.

498. A captain is responsible for goods laden.

He gives a receipt in the form of a bill of lading.

A captain is not responsible for valuables (*effetti preziosi*), specie, or notes which have not been declared.

A master is similarly responsible for all damage whatsoever sustained by goods which he has loaded on the upper deck of his vessel without the consent, in writing, of the shippers. Consent is presumed in coasting voyages limited to the administrative maritime department in which the goods are shipped and an adjacent department, and in the navigation of rivers and lakes.

The commander's responsibility does not cease even if the loading is effected by the shipper's stevedores, C.A., Genoa, 3 R.I.D.M. 766, Sc. 143, and see Art. 558 (*post*).

Where coal is habitually shipped damp, it is in good order and condition, and there is no claim against the commander for delivering it in the like state, C.A., Catania, 3 R.I.D.M. 228. "Weight, etc., unknown," frees the commander from obligation to deliver the precise amount stated in the B. of L., C.A., Genoa, 4 R.I.D.M. 583. The onus is on consignee to prove the actual amount shipped, C.C., Turin, 14 R.I.D.M. 287.

If cargo belonging to different consignees is found to be mixed on arrival a commander can free himself from liability by showing that the original storage was good, and that it is mixed by perils of the sea, C.A., Genoa, 8 R.I.D.M. 154, 422; but he must divide the cargo *pro rata* unless he is protected by some special clause in the B. of L., 2 R.I.D.M. 465, C.A., Genoa, 5 R.I.D.M. 397.

Cf. B. 13, 20, 88, F. 222, 229, 292, G. 511, 535, 566, 606, 607, H. 345, 346, 348, 350, R. 227, 341, S. 619, P. 497, Sc. 110, 117, 143, E. 36, 44, 112.

Macl. 369, 380, 388, 414; M. and P. 37-39, 315, 343; News. 57, 68, 96.

Royal Exch. Ship. Co. v. *Dixon*, 12 App. Cas. 11.

499. It is the duty of the captain to engage the crew of the vessel, and to settle the rates of pay of the persons composing it; which he will nevertheless do in concert with the owners or charterers when he is at the place where they live.

See Art. 74 of the Order for putting the Commercial Code in force (*post*).

Cf. B. 14, F. 223, G. 526, H. 343, S. 610, 634, P. 498, R. 256, Sc. 25, E. 37.

M. and P. 128, 727; News. 95.

500. A captain must keep a nautical journal divided into books as follows:—

A general account-book;

A log-book (*giornale di navigazione*);

A cargo-book or manifest (*giornali di boccaporto o manuale*);

An inventory (*inventario di bordo*).

The books above named cannot be made use of until each leaf has been numbered and marked by the maritime official appointed for the purpose, and they must be kept in accordance with the dispositions of Art. 25, the rules next following being observed.

The general account-book must contain everything relating to the captain's duties as to crew and passengers, the goods shipped, the important incidents of the voyage and consultations held, receipts and disbursements on ship's account, and generally everything that concerns the interests of the owners and shippers, and which may give rise to a charge or

legal claim, with the exception of the special remarks to be entered in the other books.

In the log-book must specially be entered, the course steered, the distances run, manœuvres executed, geographical, meteorological and astronomical observations, and everything relating to the navigation.

The cargo-book or manifest must contain the dates and places of shipment, the nature, quality, and quantity of the goods shipped, their destination, the names of the shippers and consignees, the place and date of discharge, and everything else concerning the cargo.

The inventory must show the equipments, rigging, stores and instruments with which the vessel is provided, and every alteration made in those articles.

Regulations for the uniform keeping of the nautical journal and its component books, as well as for the verification of the inventory in accordance with the dispositions of the Maritime Law, are settled by regulations, published by Royal Decree.

For Art. 25 see Appendix (*post*), for further regulations as to the inventory see Art. 71 of the Regulations for putting the Commercial Code in force, and M.M.C. 95, 99 (*post*)

The account-book forms a part of the ship's papers, and the commander has no right to detain it after leaving the ship, C.A., Genoa, 4 R.I.D.M. 583.

This regulation does not apply to yachts. See M.M.C. 101 (*post*).

By Royal Decree 14, 5, 93, No. 311, an engineer's log in a specified form has to be kept in steam vessels. See M.M.C. Art. 69 (*post*).

B. 15, F. 224, G. 519-521, H. 358, S. 612 (1, 3), P. 499-504, R. 187, 188, Sc. 35-37, E. 38, 39.

M.S.A., 1854, §§ 239-243.

501. It is not obligatory to keep a nautical journal in river and lake navigation, for voyages by vessels of less than 50 tons, which do not extend beyond the continental and insular coasts of the kingdom, the Islands of Corsica and Malta, and the small islands adjacent to them, the coast of Provence as far as Cette, the farther coasts of the Adriatic as far as Vallona in Albania, the coasts of Algeria and the Regency of Tunis, and their respective islands.

See Art. 522 (*post*); and also Art. 75 of the Order for putting the Commercial Code in force (*post*). In the United Kingdom coasters are not bound to keep official logs. M.S.A., 1894, § 239.

Cf. G. 521, Sc. 35.

502. A master must have his vessel surveyed in the circumstances and manner laid down in the Mercantile Marine Code.

Before sailing he must assure himself that the vessel is perfectly fit for the voyage to be made, and that it is properly loaded and stowed, even where he has employed special stevedores (*stivatori*).

See Mercantile Marine Code, Arts. 77-84 (*post*).

With regard to his liabilities for stowage, see 8 R.I.D.M. 604, 3 R.I.D.M. 766, 9 R.I.D.M. 302, and Arts. 496, 498 (*ante*), and to the crew, Art. 491.

Cf. B. 16, F. 225, G. 513, H. 347, S. 612 (4, 5), P. 505, 508, § 1, Sc. 26, E. 40, R. 228, 229.

Macl. 319. See also as to ships alleged to be unseaworthy, M.S.A., 1894, §§ 457, 458, 459, 463, and as to masters' duties with regard to grain cargoes, §§ 452-456, and see the *Ferro* [1893], P. 38.

503. A captain must have on board

(1.) The ship's register (*atto di nazionalità*).

(2.) The muster roll or ship's articles.

(3.) The bills of lading and charter parties.

(4.) The reports of survey (*atti di visita*).

(5.) The receipts for payment of, or certificates of bail for, customs duties.

Cf. B. 17, F. 226, G. 513, H. 357, 358, E. 41, R. 264, Sc. 27, S. 612 (1). M. and P. 139-143; News. 95.

504. A captain must be personally in command of the vessel when entering and leaving harbours, creeks, narrow channels or rivers.

He must employ a special pilot at the ship's expense in all places where it is declared compulsory by the Government of the realm, and prescribed by rules or local custom in foreign countries.

Cf. B. 18, F. 227, G. 517, S. 612 (5, 6), H. 361, 363, P. 508 (5), E. 42, R. 245, 246, 319. See Mercantile Marine Code, Arts. 66, 110, 200, 201.

M. and P. 137, 249; Macl. 190, 389.

505. In case of a breach of the dispositions of Articles 500, 502, 503 and 504, the captain is answerable for damages towards those interested in the vessel and her cargo.

Cf. B. 19, F. 228, G. 511, H. 345, 346, S. 676, E. 43.

506. A captain, in the place of residence of the owners or charterers or that of their authorised agents, cannot, without special authority, repair the ship, or purchase sails, ropes, or

other things intended for the ship's use, or charter the vessel, or borrow money on account of the ship or cargo.

Cf. B. 22, F. 232, G. 526, H. 371, S. 610 (4, 5), P. 509 (§ 1), Sc. 48, E. 47, R. 230.

M. and P. 155; Macl. 143.

507. If the vessel is chartered with the consent of the owners or by the vote of the majority, and any one of the co-owners declines to contribute to the expenses necessary for the voyage, the captain may be authorised by the Tribunal of Commerce, or if there is none, then by the prætor, twenty-four hours after notice given to the person refusing to take up his quota on his account on bottomry (*a cambio marittimo*) or by mortgage (*pegno*) of his share in the vessel.

Cf. B. 23, F. 233 [1885], 35, G. 494, 500, H. 323, 324, 342, S. 591, 592, P. 586, §§ 1, 2, E. 48, Sc. 17.

W. and B. 22.

508. In the course of the voyage, a captain may, after showing the necessity by a formal declaration signed by the principal members of the crew, make use of goods on board for the service of the ship, on condition of paying the value for them.

Cf. B. 24, F. 234, H. 324, 372, S. 813, P. 510, E. 49.

M. & P. 156-158 and Ch. VIII.; News. 100, 198; Macl. 131, 147.

509. If, in the course of the voyage, money is needed for repairing, purchasing provisions or other urgent need of the vessel, the captain must, if possible, announce the fact at once to the charterers, shippers, and consignees, and after having stated the necessity in the manner laid down in the preceding article, he may be authorised, if within the realm, by the Tribunal of Commerce, or if there is none, then by the prætor, and in foreign countries by the royal consul or his deputy, or if there is none, then by the local magistrate, to obtain the necessary sum by loan or by bottomry, by pledging or selling the cargo or by giving a lien on it, to the persons actually supplying materials, equipments, provisions, and labour.

The bottomry bond (*titolo del prestito a cambio marittimo*) and the documents to prove the other operations above-mentioned must be copied in the manner prescribed in this Code, and

noted in the ship's register by the maritime official, or consul, or other authority who has authorised it at the captain's instance, within ten days from the date of the contract, under penalty of losing their grade of privilege.

A sale of cargo must be by public auction.

The owners of the ship, or the captain as their representative, must account for goods sold at the price they would fetch in the place and at the time of the vessel's discharge.

A sole charterer, or the several shippers, if they agree, can prevent the sale or pledging of their goods by discharging them and paying freight in proportion to the portion of the voyage accomplished (*pro rata itineris peracti*). If the consent of one or more of the shippers is wanting, then those who avail themselves of this course (discharge their goods) must pay freight in full on their part of the cargo.

An owner is liable on the commander's contract for necessaries in all foreign ports even without the intervention of the Italian consul when such intervention is not required by law of the place. C.C., Turin, 16 J.D.I.P. 165, 732. "Urgent need" covers the case of a loan raised to prevent the sale of the ship at the suit of a creditor. And "a voyage" means whilst the vessel is abroad. C.A., Genoa, 9 R.I.D.M. 73.

It is not necessary that a loan on cargo alone should be entered in the register, 6 R.I.D.M. 585.

A bond given by the commander binds the owners even if informal, 8 R.I.D.M. 430; C.C., Florence; and even if the deposition of the crew (Art. 508) has not been made, though in this case it loses its privilege (Arts. 675 (9), 677 (7)), C.A., Genoa, 9 R.I.D.M. 73. The lender is not bound to see that the formalities are complied with, C.A., Genoa, 1 R.I.D.M. 60.

But it seems that to be valid the bond must be drawn in accordance with the *lex loci contractûs*, C.A., Genoa, 2 R.I.D.M. 740; 14 J.D.I.P. 169. The object of the formalities is to clear the commander as between himself and his owners, C.A., Genoa, 28, 3, 85, D.C. 1885, 378, C. de C., Florence, 28, 1, 89, D.C. 1889, 220.

The necessary element of maritime risk is present even though the policy of insurance on the ship is endorsed to the lender as collateral security if there is a doubt as to the validity of the transfer (Art. 422), or whether the sum insured is sufficient to cover the loss or as to the validity of the policy, C.A., Genoa, 9 R.I.D.M. 73.

The commander represents the owner if the latter cannot or will not act as trustee for creditors to whom the vessel is abandoned, and therefore it is not necessary to appoint a trustee, C. de C., Turin, 12, 3, 97, 13 R.I.D.M. 214, and see Art. 3, App.

The fact that the loan was in fact raised for the commander's benefit and not that of the ship does not clear the owner's liability upon the contract, unless he can prove that the fact was known to the lender at the time of the loan, C.A., Genoa, 23, 12, 86, Eco. Giur., 1887, 374. The rights and liabilities upon the loan pass to the insurer unless otherwise agreed, C.A., Naples, 10, 4, 89, D.C. 1889, 531.

Cf. B. 24, 156, F. 234, G. 528, 535, H. 324, 372, S. 643, 644, 826, P. 511, 512, Sc. 49, 52, E. 49, R. 249, 384, 386.

M. and P. 156, 158, and Ch. VIII.; News. 100, 198; Macl. 131, 147.

510. The captain may, in urgent cases arising in the course of the voyage, give notices, and even commence and carry on actions in the name and for the interest of the shipowners, in all matters relating to the vessel and voyage for which he is in command.

Similarly, third parties, elsewhere than in the place of residence of the owners, or that of their agents, may serve notices and commence and carry on proceedings against the captain, in matters concerning his own actions and those of the crew, or on contracts made by him in the course of the voyage. Notices must be served on the captain personally, or on board the ship.

The owners can at all times take up (*riassumere*) proceedings by or against the captain.

Judgments against the captain do not deprive the owners of the right of abandoning the vessel in accordance with the provisions of Art. 491.

The commander may render himself personally liable for contracts made on behalf of the ship if he uses words to that effect, 28, 4, 96, C.A., Genoa, 12 R.I.D.M. 224.

B. 230, 231 as to collisions, G. 527, P. 509. In France, in matters of Maritime Prize, Decisions of the Council of Prizes, 29 Prairial, An. 8, and 17 Niv. An. 9, and see Pardessus, *Droit Comm.* vol. ii., p. 224. In Sweden, Denmark and Holland, the ship's husband represents the owners. H. 327, Sc. 48.

M. and P. 21.

The owner's agent can be sued in his own name by a consignee of cargo, C.C., Florence, 5 R.I.D.M. 558, and can also sue, C.A., Genoa, 5 R.I.D.M. 394. The agent of a foreign S.S.Co. can also be sued for damage by collision, C.A., Genoa, 558, and the ship may be arrested on a voyage anywhere except in her home port, C.C., Turin, 10 R.I.D.M. 352. A captain cannot, however, be sued when away from the ship's home port on contracts not made by himself or a member of the crew on

the ship's behalf, C.A., Genoa, 20, 5, 89, Temi. G., 1889, 392, and see Art. 899*n* (*post*).

511. Before leaving a place where the captain has made unusual disbursements, or contracted debts, he must forward to the owners or charterers of the ship, or their agents, a statement of accounts signed by himself, both of the expenses incurred, with reference to vouchers (*documenti giustificativi*), if there are any, and of the debts, with the names and surnames and places of residence of the creditors.

If the vessel is loaded on account of owners or charterers, the captain must forward to them an account of goods loaded and their price.

Cf. B. 25, F. 235, G. 534, H. 377, P. 511, § 3, E. 50, R. 248.

M. and P. 139.

512. The master who unnecessarily contracts debts, pledges or sells cargo or provisions, or who brings into his accounts fictitious losses and disbursements, is liable personally to the charterers and to all concerned to repay the money, and pay for the articles, and also to make good damages sustained, in addition to criminal proceedings, if there are grounds for them.

Cf. B. 26, F. 236, G. 538, 543, H. 375, S. 621, E. 51, R. 248.

M. and P. 157, and Chap. VIII.; Macl. 139; News. 100, 143.

513. A captain cannot sell the ship without the special authorisation of the owners, except in the case of its being condemned as unseaworthy

The unseaworthiness must be declared, and the authorisation of the sale pronounced, if within the realm, by the Tribunal of Commerce, and in foreign countries by the consular officer.

The sale must be by public auction.

Cf. B. 27, F. 237, G. 530, H. 376, P. 513, S. 578, 479, Sc. 50, E. 52.

M. and P. 578 *et seq.*; Macl. 151 *et seq.*; News. 101.

514. A captain who is engaged for a voyage is bound to complete it, under penalty of making good all damages and expenses sustained by the owners and charterers in consequence of his default. If the ship is condemned as unseaworthy, the captain must exert himself to the utmost to procure another vessel to carry on the cargo to its destination.

Cf. B. 28, 94, F. 238, 296, G. 551, H. 354, 361, 478, P. 507 (4), 513, § 2, Sc. 62, E. 53, 115, R. 232, 235.

M. and P. 154, 159, 321; Macl. 399; News. 100, 127.

If the port to which the ship is bound is closed for sanitary reasons by a competent authority, there is a doubt whether the captain and owner through him are exonerated from liability to charterers and passengers for non-performance, C.A., Genoa, 28, 10, 85, D.C. 1886, 418, say "Yes," C.A., Genoa, 3, 8, 86, Eco. Giur., 1886, 300, and C.A., Parma, 19, 6, 88, Giur. It., 1888, 638 say "No".

515. A captain who sails on shares (*a profitto comune sul carico*) in the cargo (freight) cannot trade on his own account, unless there is an agreement in writing allowing it.

In case of a breach of this enactment the goods shipped by the captain on his own account are confiscated for the benefit of the other persons interested.

B. 29, 30, F. 239, 240, G. 543, 544, H. 353, S. 613, E. 54, 55, R. 222, Sc. 28.

M. and P. 122; Macl. 172; News. 113.

516. A captain, on arrival at his destination, whether outward or homeward bound, or in a port of call, whether voluntary or from stress of weather, and also in case of shipwreck, must have his nautical journal inspected by the proper public officers. If anything unusual has happened to the vessel, the cargo, or the people on board her, the captain must in addition report the circumstances, as well as carry out the regulations of the Mercantile Marine Code.

The report must state the place and time of sailing, the course pursued, the perils encountered, the troubles on board the ship and in general all the important incidents of the voyage.

See Art. 657 and Arts. 115-119 M.M.C. (*post*). This deposition is of the greatest possible importance, as on it and the depositions of the crew and passengers is decided how damage was caused, C.A., Palermo, 20, 3, 85, D.C., 1885, 830, and consequently who has to bear the loss; if it is a pure accident the loss rests where it falls, and if imputable to the commander or crew on the owner, C.C., Naples, 9, 6, 83, Eco. Giur., 1883, 258, in accordance with Art. 1,153 of the Civil Code, but the protest made in a British port being only evidence against the person making it is only so available in proceedings in Italy by Art. 58 of the Com. Code, 2, 7, 97, C.A., Naples, 13 R.I.D.M. 434.

Cf. B. 32, F. 242, G. 521-524, H. 379, 381, P. 506, S. 624, E. 57, Sc. 40. M. and P. 150; News. 103, M.S.A. 1894, §§ 425, 426, 465, 517.

517. The report must be made as soon as possible, and not later than twenty-four hours after arrival or putting into

port, before the President of the Tribunal of Commerce, or before a judge appointed by him, and if there is no Tribunal then before the prætor, if the vessel arrives or puts into a port within the realm, and before the royal consul or his deputy, or failing these before the local authority, if in a foreign port.

A report made within the realm must be lodged in the Registry of the Tribunal of Commerce; for this purpose the prætor must forward it without delay to the President of the Tribunal.

See Art. 73 of the Order for putting the Commercial Code in force (*post*).

Cf. B. 33, 34, 35, F. 243-245, G. 522-524, H. 380, 381, 383, P. 506, S. 624, Sc. 40, E. 58-60.

M. and P. 144, 700.

Foreign ships must obey this rule, a deposition before their own consul is useless, C.A., Ancona, 5, 12, 85, D.C., 1886, 392, C.A., Milan, 7, 2, 88, Monit, 1888, 534, C. de C., Turin, 17 J.D.I.P. 380. But this does not appear to be the case in S. Italy, C.A., Naples, 3 R.I.D.M. 97, and see note to Art. 516 (*ante*).

518. The president, prætor, or consular officer who receives a report must verify the facts therein stated, by interrogating the members of the crew, and, if possible, the passengers, separately, and not in the captain's presence. The answers must be taken down in writing, and he must besides collect by every means allowed by law such fuller information and proofs as may be available according to the circumstances of the case.

The verification above mentioned must take place as soon as possible, and the day appointed for the purpose must be announced gratis to the public by posting a notice (*affissione*) on the door of the office in which the report is lodged, in the nearest exchange, and in the vicinity of the place where the ship is anchored, and in any other suitable place.

Persons concerned and those who desire to act for them, even without being appointed agents, are allowed to be present (*assistere*) at the process of verification.

The report of these proceedings (*processi verbali*) must be appended to the report.

Evidence is admissible to rebut the matters established by the report.

On principles of reciprocity a report made by a foreign master to his

own consul in an Italian port is received (C.A., Naples, 3 R.I.D.M. 97), but this view is not held in North Italy, as there Arts. 517, 518 of the Code are held to apply strictly to foreign vessels, and depositions before their own consuls to be irregular (C. C., Turin, 17 J.D.I.P. 380). In the case of Italian ships very serious consequences follow an irregularity in complying with these articles, *e.g.*, they render a notice of abandonment invalid (C.A., Genoa, 9 R.I.D.M. 290, C. de C., Turin, 6, 4, 89, Monit, 1889, 417), and though the report itself, if not verified, is inadmissible, other means of proof are admissible, C. de C., Rome, 23, 2, 88, Ann., 1888, 200. If the verified statements of two commanders are irreconcilable, the Court will take further evidence, C.A., Genoa, 18, 4, 87, D.C., 1887, 520.

The proviso as to the absence of the captain at the examination of the crew, etc., is peculiar to the new Italian Code.

Cf. B. 37, F. 247, G. 525, H. 384, P. 506, § 1, S. 624, Sc. 40, E. 62.

M.S.A., 1894, §§ 465, 517.

519. Reports which are not verified are not admitted to discharge the liability of the captain, and are not admissible as legal evidence, except when the captain alone is saved from shipwreck in the place where he has made his report.

B. 37, F. 247, H. 384, P. 506, §§ 2, 3, S. 624.

M.S.A., 1894, §§ 694, 695.

520. Except in a case of urgency a captain cannot discharge anything from his vessel before his report is made and verified.

Cf. B. 38, F. 248, E. 63, P. 507.

Customs Consolidation Act, 1876, §§ 50, 53.

TITLE III.

Of the Engagement and Wages of the Crew.

Art. 521. The persons composing the crew are, the captain or master [*padrone*], the officers, sailors and ship's boys [*mozzi*], and the artificers named in the muster roll drawn up in the manner appointed by the regulations, and in addition, the engineers and firemen, and all other persons employed under any designation about the engines in steam vessels. The list [*ruolo*] of the crew must state the wages or share in the profits due to the crew. The other conditions of the engagement must be established by the contract of engagement (shipping articles).

Cf. B. 47, F. 250, G., 1872, 3, 10-13, 24, 25, H. 395, P. 516, S. 634, 648, R. 257, 258, E. 65.

M. and P. 195; Macl. 202; News. 26; M.S.A., 1854, § 2, "Seaman".

Hat-money or captain's gratuity, or as it should more correctly be translated "Hood Money," *diritto di cappa*, is a perquisite of the commander, C. de C., Turin, 22, 4, 82, Eco. Giur., 1882, 306, reviving a previous decision of the same Court, unless it is in fact an addition to the freight, C.A., Genoa, 29, 4, 87, Eco. Giur., 1887, 197, 5, 4, 88, Eco. Giur., 1888, 243, *cf.* The Parkdale, 8 Asp. 211. Hat-money is good English, as the expression is used in a statute of Henry VIII.

522. The contract of engagement [*contratto di arruolamento*] must be made in writing and before the local Marine Administration, if within the realm, and before the consular officer, if abroad. It must be entered on the registers of the office, and copied into the Nautical Journal [*giornale nautico*].

If any one is shipped in a place abroad where there is no consular official, the contract must be written down in the Nautical Journal.

In every case the contract must be signed by the captain and person shipped, and if the latter is unable to sign, or does not know how to write, then by two witnesses.

Agreements made without these formalities are of no effect.

The preceding regulations are not obligatory in the case of agreements for the vessels and voyages mentioned in Art. 501.

This article applies also to the captain; no other evidence than this is available, 9 R.I.D.M. 630, C.A., Genoa, 11 R.I.D.M. 374. The commander's signature is not necessary if the contract is made between the managing owner and the crew, C. de C., Turin, 6, 2, 1889, Giur. Pen., 1889, 89, and though the engagement of a person under age without the necessary steps in that case provided is bad, it does not invalidate the other engagements in the same muster roll, *ibid.*, and see M.M.C. 73 (*post*).

See Art. 75 of the order for putting the Commercial Code in force (*post*). G. (1872) 12, 24, H. 395, 396, P. 516, R. 257, 258, S. 634, 648.

M.S.A., 1894, §§ 113-124.

523. The agreement states clearly and precisely its duration and the voyage in respect of which it is made. The destination and voyage may be kept secret on account of trade speculations, provided the crew are warned, and agree to ship under such conditions. Their consent must be set out in writing in the form appointed by the preceding article.

G. (1872) 12, H. 397, Sc. 71, 72, S. 634.

M.S.A., 1894, § 114.

524. A person shipped is bound to serve, even after the term of his engagement has expired, until the return of the vessel to its destination within the realm, provided it returns direct, and with only necessary ports of call. In this case, the person whose engagement is prolonged has a right to [extra] payment in proportion to his wages.

The seaman's engagement is always considered as terminated, even before the agreed term has expired, when the ship has returned to its place of destination within the realm, after the completion of the first voyage and has been unloaded.

Cf. B. 51, F. 255, G. (1872) 41, H. 415, 441, P. 527, R. 272, S. 636, Sc. 82, E. 70.

M. and P. 179, 227; Macl. Chap. V.

525. If the term of the engagement [*arruolamento*] is not stated, the seaman can demand his discharge after two years of service, saving the exception in the preceding article. If the vessel is abroad, and a voyage back to the realm is neither commenced nor ordered, the seaman has a right, in addition to the payment of his wages earned, to the expenses of his return home, unless the captain obtains a berth for him.

A seaman cannot claim his discharge in a port of call or distress [*porto di scalo, o di rilascio*], but only in that of destination. An engagement for an indefinite time and for all voyages that may be undertaken does not hinder the seaman from being able to claim his discharge after two years, unless it is expressly agreed that the service may continue beyond two years.

B. 62, F. 270, G. (1872) 61, 66, 71, 98, P. 518, S. 636, 637, Sc. 82-84, R. 272.

M. and P. 138, 178, 179; Macl. Chap. V.; News. p. 32.

526. On the termination of the engagement, the captain must give each member of the crew a discharge in writing. The discharge must show the name and description of the vessel, the name and surname of the captain, and the date of embarkation, and must be entered on the Nautical Journal.

When from any cause the captain is unable to write out the discharge, it must be written in his presence by the

mate [*secondo*] of the ship, and signed by him and by two witnesses.

P. 519.

M.S.A., 1894, § 128; M. and P. 200, 211, 232; Macl. 212; News. § 29.

527. The captain and members of the crew may not, under any pretext, take any merchandise on board the ship on their own account, without the permission of the owners, or without paying freight, unless they are authorised to do so by the terms of their agreement.

See Art. 515 (*ante*).

Cf. B. 66, F. 251, the first clause of which is identical. G. 544, 564, H. 352, 410, P. 520, Sc. 28, 81, E. 66, R. 222.

M. and P. 122; Macl. 172; News. § 70. The cases in England do not go further than requiring the master to hand over all profits to the owner and all commissions except primage.

528. Wages are due to seamen shipped by the month from the day on which they are entered on the muster roll, unless otherwise agreed.

P. 521, Sc. 74.

M. and P. 216, 217; Macl. 207; News. § 27.

529. If the voyage is abandoned by the act of the owners, captain, or charterers, before the departure of the vessel, seamen engaged by the run or by the month have a right to be paid for the days they have been employed in fitting out the ship, and retain advances [*anticipazioni*] which they have received as compensation.

If no advances have been paid, seamen engaged by the month receive a month's wages as compensation; those shipped by the run receive a sum equivalent to a month's pay calculated on the probable length of the voyage, and if the probable length does not exceed one month, they receive the whole amount agreed upon.

If the voyage is broken up after the ship has commenced it—

(1.) Seamen shipped by the run have a right to the whole of the wages agreed on;

(2.) Seamen engaged by the month have a right to their wages for the time actually served, and in addition they have a right to compensation equivalent to the

wages they would have earned during the probable term of the voyage for which they shipped;

(3.) Seamen engaged either by the run or by the month have, in addition, a right to the expenses of returning to the place whence the vessel sailed, unless the captain or any other person concerned, or a competent authority, obtains them a berth on board a vessel returning to the place where they shipped.

Cf. B. 48, F. 252, G. (1872) 56-63, H. 411, 412, P. 522, 523, S. 638, E. 67. A seaman is not entitled to pay in addition to his maintenance if the voyage is broken up before the agreed time and he is sent home, C. A., Genoa, 14, 9, 86, Eco. Giur., 1886, 328.

Macl. 216, 224; M. and P. 210; News. § 27.

530. If trade is prohibited with the place of the ship's destination, or if the ship is stopped by order of the Government before the voyage has commenced, the seamen are only entitled to payment for the days they have been employed in fitting out the ship.

Cf. B. 49, Id., F. 253, Id., G. (1872) 56, 63, H. 413, P. 524, S. 639, 640, E. 68.

M. and P. 223; News. § 27.

531. If the trade is prohibited or the vessel stopped in the course of the voyage:—

(1.) In case of prohibition, the seamen are entitled to wages in proportion to the term they have served;

(2.) In case of the vessel being stopped, seamen engaged by the month are entitled to half their wages during the stoppage, and seamen shipped by the run are entitled to their wages according to the terms of their agreement.

If compensation is granted for the prohibition or stoppage, seamen engaged by the month receive the balance of their wages, and seamen shipped by the run receive an increase of pay in proportion to the period of the stoppage, but the compensation to all the seamen must not exceed the third part of the compensation granted to the ship.

Cf. B. 50, F. 254, G. (1872) 56-63, H. 414, 416, P. 525, S. 641, Sc. 91, 92, E. 69. The last clause as to the shares of seamen in compensation granted for an embargo is not found in the other Codes, except that of H. 416, in certain circumstances.

M. and P. 223; Macl. 217; News. § 27.

532. If the voyage is extended, the wages of seamen shipped by the run are increased in proportion to the extension.

B. 51 and F. 255 Id., *cf.* G. (1872) 41, H. 415, P. 526, R. 271, 272, S. 638, Sc. 94, E. 70 (Id.).

M. and P. 138; Macl. 205.

533. If the vessel is discharged voluntarily at a nearer place than that stated in the charter-party, the wages of the crew are not liable to any diminution in consequence.

B. 52 and F. 256, Id., *cf.* G. (1872) 54 diff., P. 526 (1), S. 638, E. 70, Id.

534. Seamen shipped on shares in profits or freight, have no claim in respect of the days on which they were employed, nor to compensation, when the voyage is broken up, hindered, or prolonged by a casualty, or by circumstances beyond control [*forza maggiore*]. If the voyage is broken up, hindered, or prolonged by the act of the charterers, the crew share in the compensation adjudged to the vessel. This compensation is apportioned amongst the shipowners and the crew in the same proportion as the freight would have been. If the hindrance resulted from anything done by the captain or owners, they are bound to compensate the crew.

B. 53 and F. 257, Id., *cf.* H. 416, P. 527, S. 442, E. 72.

535. Seamen have no claim for any wages in case of capture [*preda*], breaking-up [*rottura*], or shipwreck resulting in total loss of ship or cargo.

But they are not liable to restore advances received.

B. 54 diff., F. 258, *cf.* G. (1872) 32, 33, 56-63, H. 418, R. 302, 303, P. 535, S. 643, Sc. 91, E. 73, 74. There is now a proposition before the Italian Parliament to alter this provision.

If the vessel is abandoned to the underwriters, these latter are exclusively liable for the wages of the crew, after abandonment, C. de C., Turin, 12 R.I.D.M. 595, 13 R.I.D.M. 214. There is a personal action against the owner for those earned previously, *ibid.*

M. and P. 220-223; Macl. 215, 222; News. § 27.

536. If any portion of the vessel is preserved, seamen shipped by the run or by the month are paid out of the proceeds of the wreck, or out of whatever has been recovered out of the prize.

If the proceeds of the salvage or recapture are insufficient, or if goods alone are salved, they are paid subsidiarily out

of the freight. Seamen shipped on shares in freight are paid in proportion to the freight earned.

Seamen are paid for the days they are employed in salving the wreckage and shipwrecked goods, no matter in what way they are hired.

Cf. F. 259, H. 419-421, P. 535, S. 643, and E. 74, 76, B. 54, 56, G. (1872) 32, 36, 56.

M. and P. 242; Macl. 235. See note to Art. 535 (*ante*), 640 (*post*).

537. A seaman who falls sick during the voyage, or who is wounded in the service of the ship, is paid his wages and is nursed and medically attended at the ship's expense. If he is wounded whilst ordered on duty in the interest of both ship and cargo, he is nursed at the expense of ship and cargo.

If it is necessary that he should be landed for proper treatment, the captain must lodge with the consular officer the amount considered necessary for his treatment and return journey home.

If there is no consular officer the captain must place him in a hospital, or some other place where he can be properly treated, and leave the said sum of money there. A seaman who is landed has no claim in any case to his wages and expenses of treatment beyond four months after the time he was landed. If he is injured by defective gear he is entitled to damages, 15 R.I.D.M. 249.

Cf. B. 57, 58, F. 262, 263, G. (1872) 48, 49, H. 423-427, P. 529, R. 305-307, Sc. 90, 98, S. 644, E. 77, and see Mer. Mar. Code, Arts. 56, 75 (*post*).

M. and P. 208, 209, 221; Macl. 215, 218, 247; News. §§ 27, 30.

538. If a seaman is wounded or contracts disease through his own fault, or whilst on shore without leave, he is treated at his own expense, but the captain must advance the necessary funds in the first instance. If it is necessary to land him, the captain makes arrangements for his treatment and return home as appointed in the preceding article, reserving his right to be repaid, and the seaman only receives wages for the time he has actually served.

Cf. B. 59, F. 264, G. (1872) 50, H. 428, P. 530, S. 644, R. 278, Sc. 90, E. 79. See Mer. Mar. Code, Art. 75 (*post*).

M. and P. 208, 209, 221; Macl. 216, 247; News. §§ 27, 31.

539. In the case of a seaman dying during a voyage:—

(1.) If shipped by the month, his wages are due to his legal representatives up to the date of his death.

(2.) If shipped by the run, half his pay is due if he dies on the voyage out, or at the port of destination; the whole, if he dies when homeward bound.

(3.) If shipped on a share in the profits or freight, his entire share is due if he dies after the voyage has begun.

If a seaman is killed in defending his ship, the whole of his wages are due if the vessel arrives safely.

B. 60, F. 263, Id., G. (1872) 51-53, H. 431, P. 531, R. 307, 308, S. 645, E. 80, Id., Sc. 93.

M. and P. 208, 209, 213, 221, 235, 236; Macl. 218, 259; News. §§ 27, 31.

540. If a seaman is captured with his ship and is made a prisoner, he has a right to his wages up to the date of his capture.

If he is captured and made a prisoner whilst on ship's duty, either afloat or ashore, he has a right to his full wages up to the date when his service should have terminated.

The cargo contributes to the payment, if the duty was in its interest also.

B. 61, F. 266-269, H. 432-435, P. 540, S. 643, E. 81, 83. Most of the earlier Codes contain provisions as to ransom of seamen taken prisoners.

M. and P. 223; Macl. 222.

541. If the ship is sold during the time for which the seamen are engaged, they have a right to be sent back to their homes at the ship's expense, and to retain their wages.

B. 62, F. 270, G. (1872) 58, 67, 71, P. 533, R. 309, Sc. 88.

M. and P. 196, 210, 211, 233, 242; Macl. 221; News. § 29. *Beale v. Thomson*, 4 East, 546.

542. A captain may at any time discharge a seaman before his engagement terminates, and is under no obligation to prove that he has done anything wrong, but he must give him his discharge and provide him with means of returning home, or get him a berth on board a homeward-bound vessel.

A seaman who is discharged without proper grounds has a right to compensation, in addition to payment for his services actually rendered.

If discharged at the place where he shipped, and before the ship sails, the compensation is fixed at a month's wages; if discharged after the ship has sailed, or at a different port within the realm, or other than that at which he shipped, the compensation amounts to forty days' pay. If discharged elsewhere in Europe, or on the Mediterranean coasts of Asia or Africa, or in the Black Sea, the Suez Canal, or the Red Sea, the compensation amounts to two months' pay, and if discharged in any other place to four months.

The captain cannot in any of the above cases recover from the owners of the ship compensation paid by him, unless the man has been discharged with their consent. There is no claim for compensaion if the seaman is dismissed before the muster roll is made up.

B. 62, F. 270, G. (1872) 104-105, H. 344, 436-439, P. 534, S. 637, 638, E. 87.

M. and P. 210, 211, 217, 241; Macl. 212, 216, 250, 251; News. §§ 27, 29, 30.

543. The crew have a right to be victualled on board until their wages or share in the profits are paid in full.

P. 535, Sc. 45.

Macl. 245.

544. Unless it has been otherwise agreed, the crews, on the termination of their engagement, must continue to serve until the ship is in safety, discharged, and cleared. During this time they are entitled to their keep and pay.

If the vessel sails on a new voyage whilst in quarantine, a man who does not wish to ship for it has a right to be landed at the quarantine station and paid until clear.

The expenses of keeping him and of the quarantine and lazzaretto are a charge on the ship.

G. (1872) 55, H. 446-448, P. 535, 536, Sc. 84, R. 272, 300.

M. and P. 227.

545. The wages and perquisites (*emolumenti*) of seamen cannot be assigned or sequestrated, except for legally established claims for sustenance, or for debts due to the ship herself, arising out of service on board her. In the former case, the amount of wages or perquisites sequestrated must not exceed one-third of the whole.

[*Cf.*, for this provision, the Law of 14th April, 1864 (*Pensioni degli*

Impiegati Civili), Arts. 36 & 45, as referred to by D'Ettore and De Sio, in their edition of the Code of Commerce, 1882.]

H. 452, P. 537, Sc. 69, 76, R. 269.

M.S.A., 1894, §§ 156, 163; C. L. P. Act, 1854, § 61; M. & P. 194, 197; Macl. 212; News. § 28.

546. The enactments concerning the pay and treatment of seamen apply to the captain or master and to the officers, and likewise to every other member of the crew.

B. 64, F. 272, G. 481 (1872) 2, 3, H. 394-452, P. 516, Sc. 108, E. 65-87, S. 648.

M. and P. 86, 124; News. § 70; M.S.A., 1894, § 167.

As a result of these two articles the salary of a commander cannot be attached even for debts incurred for the ship, and for which he has rendered himself personally liable, 26, 3, 97, C.A., Turin, 13 R.I.D.M. 454.

TITLE IV.

The Contract of Affreightment.

Cf. "*Il contratto di noleggio le a Polizza di carico*," by V. Pila, Advocat, Romo Unione typografico, 1893.

CHAPTER I.

General Provisions.

Art. 547. The Contract of Affreightment [*noleggio*] must be in writing.

The document must state:—

(1.) The name, nationality and capacity of the ship.

(2.) The name and surname of the charterer and of the person letting the ship.

(3.) The name and surname of the captain or master.

(4.) The place and time agreed on for loading and discharging.

(5.) The freight [*nolo*].

(6.) Whether the charter-party applies to the whole ship or a part of it.

(7.) The compensation agreed on for demurrage [*ritardo*].

The provision that it should be in writing is not necessary where the charter relates to the vessels or voyages mentioned in Article 501.

(4) "Running days," in calculating these all days are reckoned even if no work can be done on them, except such as are specially excluded by the contract, as, *e.g.*, "Sundays and Holidays," C.A., Genoa, 25, 11, 95, 11 R.I.D.M. 658.

An agreement to discharge — tons *per diem* does not bind the consignee if the delay is not occasioned by him, 8 R.I.D.M. 604, C.A. Cattanio, 8 R.I.D.M. 716.

L'Imbrago is the Italian name of a contract of letting equivalent to a demise of the ship, and this must also be in writing (C.A., Genoa, 3 R.I.D.M. 763).

When the contract is for time at a stipulated rate per day, the owner only finding crew and provisions for them, and the ship being at the disposal of the hirer, the contract is one of letting and hiring and not of work and labour, and therefore the hirer is responsible for damage unless caused by *force majeure* or ordinary wear and tear, C.A., Genoa, 4, 2, 97, 13 R.I.D.M. 207. An agreement made by a broker to load a specific quantity of goods for a specific freight at an approximate date is a valid charter, C.A., Genoa, 6, 4, 89, Temi G., 1889, 334. It is the duty of the owner and not of the charterer to supply requisite ballast, C.A., Genoa, 22, 3, 89; Temi G., 1889, 359. Sub-sec. 7 need not be complied with, its only effect is to settle the matter without the intervention of law or of custom of port, etc., C.A., Genoa, 10, 1, 88, Eco. Giur., 1888, 163. The necessity for writing is only for the sake of proof not for validity, hence if there is any writing from which the contract may be inferred, any method of proof is available for the details, 5, 6, 96, C.A., Genoa, 12 R.I.D.M. 225.

F. 273, H 455, P. 541, R. 328, S. 652, Sc. 109, E. 90.

M. & P. 289-292; News. §37; Macl. 322.

548. A change of the captain or master mentioned in the document, even if the consequence of his discharge by the owners of the ship, does not operate to set aside the terms of the charter unless it has been so agreed.

P. 544.

M.S.A., 1894, §§ 167, 472, 483. Consignee, if present, must consent to change of master by Court, M. and P. 119, 120; Macl. 158.

549. If the time for loading or discharging is not mentioned in the charter, it is regulated by the custom of the port.

In case of a general ship each consignee pays demurrage for his own delay, it is not divided *pro ratâ*, 8 R.I.D.M. 603. It is a custom of the port of Genoa to discharge direct to quay and by consignee, 11 R.I.D.M. 387. The proof of the custom is on the consignee, 15 R.I.D.M. 253, C.C., Turin.

F. 274, Id., G. 568, 595, H. 457, 458, P. 545, S. 656, Sc. 118, 119, E. 91.

Fowler v. *Knoop*, 4 Q.B.D. 299, a "reasonable" time. *Wright* v. *New Zealand Shipping Co.*, 40 L.T. Rep. N.S. 413. News. §§ 40, 73; Macl. 488.

550. If the charter-party is by the month or other term, and if the time from which freight counts is not agreed on, it runs from the day on which the loading of goods to be carried commences until they are discharged at the port of destination.

F. 275 diff., G. 622, H. 463, P. 546, S. 658, E. 93.

M. and P. 293; Macl. 423, 451, 458.

551. If trade with the place to which the vessel is bound is stopped before she sails by a Government [*Potenza*], the contract is dissolved, and neither party is liable for damages.

The shipper must bear the expenses of loading and discharging.

In the case of passenger ships if the master knows that his port of destination is closed to passengers on account of an epidemic when he sails he is liable to them for loss they may sustain, even if they know of the order themselves he is bound to tell them its effect. The *Matteo Bruzzo*, 4 R.I.D.M. 581, C.A., Parma, 3 R.I.D.M. 660, C.A., Genoa. The closing of the port is not confined to war causes, but includes a closure for sanitary reasons, C.A., Genoa, 28, 11, 85, D.C. 86, 418, C.C., Turin, 9, 2, 88, Annali 1888, 94. This and the two following articles being under the heading of "General Provisions" apply to passengers as much as to cargo, C.C., Turin, 9, 2, 88, Annali 1888, 94.

Cf. B. 90, F. 276, G. 629, H. 499, P. 547, S. 690, Sc. 159, E. 94.

M. and P. 324; News. § 46; Macl. 516, 517.

552. If the sailing of the vessel or the progress of the voyage is delayed for a time by accident or circumstances beyond the control of the parties, the contract still subsists, and there is no claim for increase of freight or damages in consequence of the delay.

The shipper can have his goods discharged during the detention at his own expense, on condition of reloading them or indemnifying the captain, but he must give bail for the performance of the obligation.

This article applies to passengers, C.C., Turin, 9,2, 88, Annali, 1888, 94.

Cf. B. 84-86, F. 277, 278, 300, G. 622, 637, 638, H. 505, P. 548, S. 691, E. 95, 96, Sc. 161.

M. and P. 319, 322, 325, 352, 409 diff.; News. §§ 46, 65; Macl. 358, 399, 418, 488.

553. If the port to which the ship is bound is blockaded, or if any other accident or circumstance beyond the control of the parties prevents the ship from entering the port, the captain must, if he has received no orders, or if it is impossible to carry

out the orders he has received, do what is best for the interests of the shipper, whether by going to some neighbouring port or by returning to the port from which he sailed.

Cf. B. 92, F. 279, 299, G. 634-637, H. 370, 504, P. 549, S. 677, E. 97. M. and P. 331, 352; News. § 47; Macl. 542.

554. The provisions of Art. 415 are applicable to charter-parties.

For Art. 415 see App. (*post*).

B. 105, F. 105.

Summary methods of ascertaining the amount of damage sustained are given by Articles 71 and 402 App. See *Société Ligurienne, etc.*, v. *John White*, 4 R.I.D.M. 582, C.A., Genoa, 11 R.I.D.M. 384.

CHAPTER II.

Bills of Lading.

Art. 555. A bill of lading [*Polizza di Carico*] must express the nature, species, quality and quantity, of the goods shipped.

It must be dated, and must state :—

(1.) The name and residence of the shipper.

(2.) The name and residence of the consignee.

(3.) The name and surname of the captain or master.

(4.) The name, nationality and capacity of the ship.

(5.) The place from which she sails and that to which she is bound.

(6.) The freight.

The bill of lading must have the marks and numbers of goods shipped noted in its margin. It may be drawn either to order or to bearer, and in the former case the form and results of an endorsement are regulated according to the rules laid down in Book I., Title X. A bill of lading cannot be signed by the captain before the goods are shipped.

The effect of Book I., Title X. (which see App.) is that a person receiving a bill of lading endorsed in blank cannot thereafter allege that he was acting only as agent for the shipper, and therefore he is personally liable for the freight, *Geyer* v. *Capitaine X.*, 4 R.I.D.M. 345. The holder of a bill of lading endorsed to him at any time acquires all the property in the goods, and also the right to sue the shipowners for damage to them, *Oaches* v. *Profumo*, 10 R.I.D.M. 346.

Cf. B. 40, F. 281, G. 642, 643, H. 507, 508, P. 538, S. 706, 708, Sc. 132, 134, 145, E. 99.

M. and P. 338, 339, 344; News. §§ 48, 50, 22; Macl. 366, 371, 372.

556. A bill of lading is drawn in quadruple originals for the captain, owner or manager [*armatore*] of the ship, the shipper, and the consignee respectively.

Each original must point out for whom it is intended.

If the shipper requires one or more copies of the original intended for the consignee, the regulations of Arts. 277 and 278 apply to such copies.

The original bills for the captain and shipowner are signed by the shipper, the others by the captain.

The bills should be signed and exchanged within twenty-four hours of the completion of the loading.

The shipper should within the same time furnish the captain with clearances for the goods shipped and receipts or acceptance of bail for Custom-house duties.

For Arts. 277, 278, see App.

Cf. B. 41, F. 282, G. 642, H. 471, 509, 510, P. 538, S. 707, Sc. 133, 125, E. 100.

M. and P. 338-345; News. § 53; Macl. 366.

557. The captain must deliver the cargo to the person presenting a bill of lading, whatever number it bears, unless he has received notice of any adverse claim.

In the event of adverse claims, or if bills of lading are presented by several persons, the captain must deposit the cargo under judicial authority, and may then be authorised to sell the necessary quantity of it for his freight.

A contract of affreightment is interpreted by the *lex loci contractus*, Co. Civ. 1,134, C.C., Naples, 17, 7, 95, 26 J.D.I.P. 564, but its effects by the law of the place of execution, C.C., Naples, 4, 12, 92, 26 J.D.I.D. 866, and mere commercial customs cannot be given effect to even as rules of interpretation where the law is express, C.C., Naples, 8 R.I.D.M. 712.

If a bill of lading gives a lien on cargo for payment of freight and demurrage, the lien is lost by delivery of cargo, see note to Art. 672 (*post*), C. A., Genoa, 4 R.I.D.M. 97. A commander cannot require the delivery of a bill of lading to himself, but only that it be presented and note of the delivery of the goods endorsed on it, he can require a separate receipt for the goods, see Art. 560 (*post*); C.C., Naples, 8 R.I.D.M. 712, C.C., Florence, 2 R.I.D.M. 732.

The principles of the law of carriage generally (Art. 388 *et seq.*) apply, and therefore a person presenting a through bill of lading need not

trouble himself about the intermediate ones, C. A., Venice, 1 R.I.D.M. 65, though when a commander signs a bill of lading and it contains a clause exonerating him from liability after the transhipment, he is under no liability even for short delivery, 13, 12, 95, C.C., Turin, 11 R.I.D.M. 655, but the performance of a contract contained in a bill of lading is governed by the law of the place of execution of the contract, see Art. 58, C.C., Naples, 8 R.I.D.M. 713. If the goods are delivered to the holder of a bill of lading drawn to order and not endorsed, the commander is free from liability (C. A., Lucca, 2 R.I.D.M. 83), and even if endorsed to a person other than the holder, C. A., Naples, 14 R.I.D.M. 295, but a clause purporting to free him from any liability to verify the shipper's signature in an endorsement is invalid, C. A., Venice, 13, 11, 85, D. C., 1886, 22, C.C., Turin, 28, 12, 86, D. C., 1887, 343. If goods get mixed without any fault of the commander in the course of the voyage, he can deliver them as they come to hand (C. A., Genoa, 18, 5, 86, D. C., 1887, 34), and if one consignee gets more than his share an action lies against him and not against the ship by one who gets less, C. A., Genoa, 14, 6, 89, Temi G., 1889, 553.

A clause in a bill of lading, "all other conditions as per charter-party" does not render a consignee liable for dead freight or demurrage, etc., though specified in the charter-party, if they are not also specified in the bill of lading, C. A., Genoa, 12 R.I.D.M. 228, 602, 15 R.I.D.M. 255, C.C., Turin, 13 R.I.D.M. 455. The clause "Numbers and marks unknown," or "weight unknown," frees the commander from obligation to deliver the precise goods specified in the bill of lading unless the consignee can prove that they were in fact put on board, C. A., Genoa, 13 R.I.D.M. 452, 15 R.I.D.M. 534, C.C. Turin, 14 R.I.D.M. 287. A bill of lading should be produced when an action is founded upon it, but if its non-production is accounted for by its having been returned to the transport agent, secondary evidence of its contents is admissible. C. A., Genoa, 14 R.I.D.M. 565. Clauses stamped on the back of a bill of lading and not specially signed bind the parties, *ibid.*

The commander is under no obligation to ascertain if endorsements of a bill of lading are properly made, C.C., Florence, 16, 3, 96, 12 R.I.D.M. 221.

Cf. B. 43, 44, F. 284, G. 645, H. 515-518 diff., R. 338, 350, S. 716, Sc. 139, 165, P. 539.

M. and P. 321, 322, 154, 359; News. § 53; Macl. 403.

558. A bill of lading drawn up in the form described above is binding in law between all persons concerned in the cargo and between them and assurers.

It has been held that clauses in a bill of lading, excepting negligence of master and mariners (C. C., Florence, 3 R.I.D.M. 763, 15 J.D.I.P. 554, C. C., Palermo, 2 R.I.D.M. 212, Trib. Civ., Genoa, C. A., Ancona, 10 R.I.D.M. 640, 8 R.I.D.M. 418, C. A., Lucca, 2 R.I.D.M. 82), are valid. But not it seems one excepting barratry, C. A., Genoa, 9 R.I.D.M. 82, or the actual wrong-doing of the commander, as *e.g.* in landing goods at a wrong port,

C. A., Genoa, 24, 2, 96, 12 R.I.D.M. 223. Also clauses giving jurisdiction in questions that might arise to a particular court (C. C., Naples, 2 R.I.D.M. 464, C. C., Palermo, 26, 11, 89, Temi G., 90, 556), or limiting the liability to the value of the goods, C. A., Genoa, 24, 2, 96, 12 R.I.D.M. 222, are valid, and on the other hand clauses purporting to incorporate prejudicial conditions of a charter party (C. C., Florence, 3 R.I.D.M. 368), or to exonerate the shipowner from the consequences of not verifying the endorsement on a bill of lading (C. C., Turin, 3 R.I.D.M. 369), or to avoid liability for delay in transhipping (3 R.I.D.M. 229, 15 J.D.I.P. 424), or for his own default (C. C., Palermo, 2 R.I.D.M. 212), or which are in writing and inconsistent with printed clauses unless so expressed, C. A., Genoa, 8, 4, 90, Temi G., 1890, 237, are invalid, 6 R.I.D.M. 85. The clause "Weight, etc. unknown," leaves it open to consignee to prove the weight delivered and shipped by any method, C. C., Florence, 12 R.I.D.M. 222, C. A., Genoa, 10 R.I.D.M. 362, 8, 3, 90, Temi G., 90, 176, but the onus of proof is on him, C. A., Genoa, 15 R.I.D.M. 534, unimportant omissions in a bill of lading do not render it invalid, C. C., Rome, C. Supreme, 1886, 1,053.

A contract, though in the form of a bill of lading, given before the goods are embarked, has not the effect of a bill of lading. The shipper signed such a document, on the face of which the goods were to go in a certain ship on a certain day, but there was a proviso that if there was no room in that ship they should go by the next; held by the Court of Appeal, Genoa, that this document being signed by the shipper only, could not be used to prove a contract, and was not a bill of lading, and that the shipper was entitled to damages for delay, the promise to forward on a fixed day being absolute, The Szechengi, 9 R.I.D.M. 623. The custom of the port of Genoa, and *semble* of Italian ports generally, is that when the ship is consigned to an agent at the port of discharge, the agent has charge of the discharge of cargo and payment of all charges for ship and cargo, though he must on board the ship act under the orders of the commander, C. A., Genoa, 13, 3, 97, 13 R.I.D.M. 218. Clauses in the charter-party, not incorporated in a bill of lading, are of no effect against holder of latter. C. A., Genoa, 17, 7, 96, 12 R.I.D.M. 602.

A clause in a bill of lading authorising the shipowner to discharge the cargo by such means as he chooses at the expense of the consignees, and exonerating him from all liability is valid, but if under such circumstances he employs a stevedore, the stevedore is liable for damage sustained unless he can prove the condition laid down in Art. 496, C. A., Genoa, 14 R.I.D.M. 545.

It is competent to the parties to a bill of lading to confine the consideration of points in dispute with regard to it to a special tribunal, *e.g.* to one in the ship's home port, though this could not be done in an action of tort, C. C., Naples, 14 R.I.D.M. 294.

B. 42 Id., F. 283 Id., G. 651, H. 512, S. 709, Sc. 144, E. 101, P. 540.

M. and P. 343 diff.; Macl. 348 diff.

559. If there is a variance between bills of lading of the same cargo, the captain's is binding if filled up by the shipper or his agent, and that presented by the shipper or consignee is binding if filled up by the captain.

Cf. B. 43, F. 284, H. 515 diff., R. 337, S. 710, Sc. 144, E. 102.

560. The agent or consignee who receives goods mentioned in a bill of lading or charter-party is bound to give the captain a receipt when required, under penalty of paying the expenses incurred and damages, including demurrage.

B. 46 Id., F. 285 Id., G. 650, Sc. 139, E. 103, S. 718, R. 350.

M. and P. 150; Macl. 404, 418.

A purchaser of goods to "arrive" is bound to reimburse the vendor for demurrage, etc., arising on discharge from the error or default of the purchaser, *Galletti* v. *Campanaivi*, 6 R.I.D.M. 84, but the consignee is primarily liable, *White* v. *Copello*, 6 R.I.D.M. 84, 581, and if there are several consignees they will be jointly liable, *Bruna* v. *Bolleti*, 6 R.I.D.M. 85; see The *Ben Wirlich*, 4 R.I.D.M. 580.

The consignee must give a receipt, but need not surrender the bill of lading, C.C., Naples, 8 R.I.D.M. 713; C.A., Lucca, 31, 12, 85, D.C., 1886, 209, 1, 5, 88, Annali, 1888, 262, C.C., Florence, 1, 7, 86, D.C. 86, 726.

CHAPTER III.

Freight.

561. Freight [*nolo*] is settled by the agreements of the persons concerned and proved by the charter-party or bill of lading. Freight may be agreed on for the whole or a portion of a vessel, for one or more voyages, or for a term, for the carriage of specified articles, or by the number, weight, or size of the articles to be carried.

Cf. B. 70, F. 286, H. 453, 460, 461, P. 542, E. 104.

M. and P. 62, 362; News. § 74; Macl. 421-424.

A commander must not insert words in a bill of lading which place the shipper in a worse position than has been agreed, 29, 12, 86, C.C., Florence, D.C., 1887, 250.

Where the whole ship above and below deck is chartered for a lump sum, the commander is only bound to load goods up to the capacity and tonnage of the ship, C.A., Catania, 31, 12, 86; Cons. Comm., 1887, 152.

When freight is payable either at the rate current at the port of discharge if in the same country, or at the rate of exchange if in a foreign country, the consignee at the foreign port of discharge may pay in either at his option, C.A., Genoa, 13 R.I.D.M. 824.

562. A captain who states his vessel to be of greater or less capacity than is the fact is liable in damages to the charterer. He is not deemed to have made an erroneous statement if the difference does not exceed $\frac{1}{20}$, or if the statement agrees with the ship's register.

If a certain specified space is reserved for a shipper, and a part of it is used for bunker coal by error, the shipper cannot have the agreement cancelled, but is entitled to a reduction in the agreed freight *pro ratâ*, 24, 4, 96, C.A., Genoa, 12 R.I.D.M. 224.

B. 73, 74, margin of error $\frac{1}{40}$, F. 289, 290, do., H. 459, do., P. 542 $\frac{1}{40}$, R. 340, S. 669, 688 $\frac{1}{30}$, E. 109—3 per cent.

M. and P. 298; News. § 41; Macl. 346.

563. If the whole ship is chartered, and the charterer does not load a full cargo, the captain cannot ship other goods without the charterer's consent, the latter profits by the freight of the goods which complete the cargo.

If the charterer wishes to ship goods of exceptional weight, and which cannot be got on board with the ship's appliances, the master may refuse to receive them, The *European*, 4 R.I.D.M. 340, but see Art. 497.

Cf. B. 72, 75, F. 287, 288, G. 578, H. 456, 464-466 diff., P. 552, R. 354, S. 672, 679, 680, E. 105, Sc. 126, 130.

M. and P. 298, 313; News. §§ 41, 42; Macl. 348, 349, 415. *Morris* v. *Levison*, 1 C.P.D. 155.

564. A charterer who, before the vessel sails and before he has loaded anything, announces his determination to abandon the voyage, must pay half freight. If he has not announced his determination to break up the voyage, or if he loads less than the agreed cargo, he must pay freight in full.

If he loads more than agreed on he must pay freight on the excess at the rate of freight agreed on.

Cf. B. 75, F. 288, G. 580, H. 464, 467, 469, P. 553, S. 674, 680, 685, 688, 689, E. 106-108, Sc. 126.

M. and P. 298, 313, 329 diff.; News. § 75; Macl. 419, 444.

The right to abandon the contract on payment of half freight is not confined to the charterer in his relationship to the commander, but extends to the person forwarding the goods, and the transport agent, C.A., Genoa, 27, 10, 1885, Eco. Giur., 1886, 6.

565. If the charter-party is for the carriage of specified goods, the shipper may withdraw the articles he has loaded before the ship sails on paying half freight. He bears the

expense of loading and unloading and of reloading other goods which require to be moved, and also pays demurrage.

Cf. B. 75, 87, F. 288, 291, G. 587, H. 473 diff., Sc. 127 diff., E. 110, 111.

M. and P. 319 diff.; News. § 42 diff.; Macl. 419.

566. The captain may land goods found on board and which have not been declared to him at the place of shipment, or he may exact freight for them at the maximum rate paid at the place for similar goods.

B. 88, Id., F. 292, G. 564, H. 477, S. 674, Sc. 115, E. 112.
Macl. 388, 428, and see Art. 649, (*post*).

567. A shipper who withdraws his goods in the course of the voyage must pay freight in full, and all expenses of moving other goods caused by the unloading of his own. If the goods are withdrawn on account of the acts or defaults of the captain he is answerable for damages and expenses.

B. 89, Id., F. 293, Id., G. 582-584, H. 511, S. 684, P. 554, Sc. 128-30, E. 112.
Macl. 418.

568. If the ship is delayed on sailing, in the course of the voyage, or at the port of discharge by the charterer's act, he is liable for demurrage.

If a vessel chartered out and home returns empty, or with an incomplete cargo, full freight is due and demurrage in addition.

B. 82, Id., F. 294, Id., G. 567, 574, 583, 584 H. 474, R. 353, S. 675, E. 113.
Macl. 419, 443, 488, 489.

The word "voyage" [*viaggio*] has no precise meaning in Italian Law; it varies according to circumstances, and the intention of the parties, and especially according to the ship's first destination, C.C., Turin, 24, 4, 83, Eco. Giur., 1883, 227, C.A., Genoa, 19, 6, 96, 12 R.I.D.M. 227.

Permission given to a commander to discharge either on to the shore or into lighters does not preclude a claim for demurrage in delay in discharging, C.A., Genoa, 10, 1, 88, Eco. Giur., 1888, 163.

Consignees are not jointly liable for demurrage even if all bills of lading contain the same time limit, C.C., Turin, 31, 12, 86, Eco. Giur., 1887, 153, 11, 6, 87, 3 R.I.D.M. 656, 4 R.I.D.M. 97, 5 R.I.D.M. 558, 6 R.I.D.M. 84, 8 R.I.D.M. 603, unless otherwise agreed in the bill of lading, C.A., Genoa, 6 R.I.D.M. 65, and if in fact the delay is caused by some person's goods having to be got out first, such person is liable to the one who has to pay for demurrage, C.A., Venice, 4 R.I.D.M. 580. Demurrage may be claimed

though not specified in the bill of lading, C.A., Genoa, 10, 1, 38, Eco. Giur., 1888, 163, and clauses in a bill of lading avoiding liability for delay in transhipment are invalid, 3 R.I.D.M. 229. Demurrage cannot be claimed when caused by the way in which goods are stowed, C.A., Genoa, 31, 12, 88, Temi G., 1889, 267, or by the condition of the goods themselves, C.A., Casali, 8 R.I.D.M. 604, nor if the consignee will not pay freight because he has a counter claim which he could not enforce after payment of freight, C.A., Genoa, 9 R.I.D.M. 640.

Lay days begin to run from the time at which the commander has given notice that he is ready to discharge, C.A., Genoa, 18, 4, 90, Temi G., 1890, 320, in whatever place is assigned to him by the authorities of the port, C.A., Genoa, 13, 3, 90, Temi G., 1890, 214.

When goods are sold to arrive, and the purchaser conducts the discharge, he is liable to the vendor for any demurrage the latter may have to pay, and cannot plead ignorance of the terms of the bill of lading, C.A., Genoa, 3, 3, 90, Temi G., 1890, 210.

569. The captain is liable to pay damages to the charterer, if the ship is stopped or delayed by his (the captain's) act on her departure, in the course of the voyage, or at the port of discharge.

See 8 R.I.D.M. 716, 9 R.I.D.M. 640, and Art. 496.

B. 83, Id., F. 295, H. 475. P. 663, R. 338, 343, 344, S. 673, 825, Sc. 111, E. 114.

Macl. 463, 489.

A commander is not liable for the consequences of a slight error in judgment as to his time of sailing, C.A., Genoa, 28, 11, 85, D.C., 1886, 418, and a consignee cannot retain freight as against alleged damage by delay, he can only require bail, C.A., Ancona, 2, 4, 87, D.C., 1887, 793.

570. If the captain is compelled by an accident, or by circumstances beyond his control, to repair the vessel in the course of the voyage, the charterer is bound to wait or pay full freight. If the vessel cannot be repaired, freight is due in proportion to the amount of the voyage completed.

If the captain charters another vessel to carry the goods to their destination, the new charter is deemed to be made for the account of the shipper.

A compulsory deviation is a *force majeure* which excuses the captain; whether the deviation is compulsory or not is a question of fact for the Court of First Instance, and not subject to appeal, C.C., Palermo, 8 R.I.D.M. 716.

If a vessel is a constructive total loss and abandoned to underwriters, the cargo owner may rescind the contract, unless the owner or insurer supplies another ship; he is not bound to wait till the abandon-

ment is declared effective by law, but if there are disputes between him and the shipowner he must get an order of the Court to discharge, C.A., Genoa, 4 R.I.D.M. 339.

Cf. B. 85, 94, 97, F. 296, Id., G. 638, H. 478, P. 556, S. 657, 683, 688, E. 115, Sc. 163, 164, R. 345, 418.

News. §§ 65, 78, 79; Macl. 399 (*pro ratâ itineris peractâ*).

571. The captain loses his freight, and is liable in damages to the charterer, if the latter proves that the vessel was unseaworthy when she sailed. This may be proved even in contradiction to the official reports of survey.

See Mer. Mar. Code, Pt. I., Tit. II., Ch. VIII., and note to Art. 646, (*post*), 23, 4, 98, C.A., Genoa, 14 R.I.D.M. 292.

B. 95, Id., F. 297, Id., G. 559, H. 479, P. 557, S. 676, Sc. 142, R. 229, 338, 339, E. 116.

News. § 61; Macl., 347, 380, 381.

572. If trade with the country to which the ship is on a voyage is interdicted, full freight is due to the captain, even if he is obliged to bring back his cargo to the port whence he sailed. But if the ship is chartered "out and home," half the entire freight or of the two freights put together is due.

Cf. B. 91, F. 299, G. 634, H. 504, P. 549, S. 677, 692, E. 118, Sc. 161.

News. § 47; Macl. 523.

By the custom of the Port of Genoa, if a ship puts back for a reason of *force majeure*, but not prohibition of trade, she is entitled to one-third freight to cover expenses of ballasting, loading, etc., 7, 7, 87, Eco. Giur., 1887, 237.

573. If a vessel is chartered to go to a port and there load a cargo and carry it to another port, and trade is prohibited whilst the vessel is proceeding in ballast to the loading port, the captain is entitled to compensation for the expenses incurred in executing the contract, the amount of which depends on the circumstances of the case.

Cf. G. 640, H. 503.

Macl. 520.

When a ship carries empty casks without freight to the place where she is to load wine it is a voyage out and home, and so treated, even if by reason of *force majeure* she cannot bring back the full casks or all of them, C.A., Genoa, 16, 7, 87, Eco. Giur., 1887, 270.

574. If the vessel be placed under embargo during its voyage by any Government, or compelled to stay in port to repair damages, even such as have been sustained voluntarily for the general benefit, no freight is due during the detention or embargo

if the vessel is chartered by the month, nor any increase of freight if chartered for the voyage.

B. 85, 94, F. 296, 300, G. 634, 635, 638, H. 505, P. 558, R. 349, E. 115, 119.

News. § 46; Macl. 516.

575. Freight is due for cargo which the captain has been compelled to sell, or pledge, or use for the vessel's pressing necessities. He must meanwhile repay the owners the value of the goods at the place where they would have been discharged, if the ship arrives in safety.

If the vessel is lost the captain must repay to the owners of goods which he has sold or made use of the price they fetched, and for those which he has pledged, the amount borrowed on them, deducting the freight stated in the bill of lading. In both these cases the shipowners retain their right of abandoning the vessel. When a loss results from the exercise of this right to those whose goods have been made use of, sold, or pledged, the loss is apportioned on the value of, and contributed to by, such goods and all the others which reach their destination, or are saved from shipwreck, subsequent to the occurrence of the perils of the sea which rendered the using, sale, or pledging necessary.

Cf. B. 93, F. 298, G. 611, H. 480, P. 555, S. 659, Sc. 204, E. 117, R. 349.

News. § 78; Macl. 147, 409.

If goods are sold to be carried in a specified ship the liability of the vendor ceases only when they are laden in the ship, hence if the ship is destroyed before loading the contract remains in force and the vendor is liable for any loss the purchaser may incur from its non-execution, C.C., Turin, 13 R.I.D.M. 825.

576. The captain has a right to freight on goods jettisoned for the good of the whole adventure when their claim to contribution is admitted.

The last portion of this article appears to exclude deck-loads from its operation. See Art. 650 (*post*).

Cf. B. 96, F. 301, G. 715, H. 481, P. 555, S. 660, E. 120.

News. § 120 diff.; Macl. 639.

577. No freight is due for goods lost by shipwreck or stranding, stolen by pirates, or captured by the enemy, and the captain must repay freight paid on them in advance, in the absence of an agreement to the contrary.

Cf. B. 97, F. 302, G. 617, 628, 633, H. 482, S. 661, Sc. 151, E. 121. Macl. 434, 443, 458.

578. If the vessel and goods are ransomed, or if the goods are salved from shipwreck, the captain has a right to freight as far as the place of capture or wreck. He has a right to the freight in full if he contributes to the ransom, provided he carries the goods to their destination.

Contributions to ransom are calculated on the price current of the goods carried at the place of their discharge, deducting expenses and on one-half (the value of) the ship and freight.

Seamen's wages do not contribute.

Cf. B. 97, 98 diff., F. 303, 304, Id., G. 630, H. 483, S. 662, R. 405, E. 122, 123.

Macl. 620, 630.

579. If the consignee refuses to receive the goods the captain may, with the authorisation of the judge, sell a sufficient amount to pay his freight, and put the remainder on deposit. If the price realised by the sale is not sufficient to pay the freight he preserves his right of action against the shipper.

If holders of bills of lading fail to claim their goods and the ship's consignee discharges them under provisions of the bills of lading he constitutes himself agent of the holders of the bills of lading and liable to them for damages sustained in the discharge, the *Billow*, 4 R.I.D.M. 582.

When no consignee appears goods may be placed on deposit under the direction of the President of the Tribunal of Commerce, under the provisions of Art. 413, but as this measure is only one of preservation and provisional, if the consignee subsequently appears he can have the goods delivered without further formality, C.C., Florence, 16, 3, 96, 12 R.I.D.M. 221.

B. 78, Id., F. 305, Id., G. 623, H. 489, P. 559, S. 668, Sc. 156, E. 124. News. §§ 66, 79; Macl. 408, 418.

580. A captain cannot retain the goods carried for default in paying the freight.

He can, at the time of the discharge, require the cargo to be deposited with a third person until the freight is paid.

When goods are once discharged even into lighters, the right to have them deposited is lost, and it only exists for freight not for demurrage, dead freight, etc., 4 R.I.D.M. 97, 345; C.A., Genoa, 16, 7, 87, Eco. Giur., 1887, 270, 13, 3, 88; Leggi, 1888, 565; 17, 7, 96, C.A., Genoa, 12 R.I.D.M. 228, or general average, C.A., Ancona, 15 R.I.D.M. 247, and *cf. Furness, etc., v. White & Co.*, 1894 (1 Q.B.) 483.

B. 79, Id., F. 506, Id., G. 615, 624, H. 487, P. 561, S. 665, E. 125, Sc. 155, R. 338 (5), 359 and 360.

News. § 66 ; Macl. 404-406.

581. In no case can the shipper require a reduction in the freight.

The shipper cannot abandon for the freight goods which have decreased in value or deteriorated, whether by their own inherent vice, by accident, or by circumstances beyond his control. However, if casks of wine, oil, or other liquids have leaked so as to be empty or almost empty, they may be abandoned, each for its own freight.

Cf. B. 76, 77, F. 309, 310, G. 616, H. 496, 497, P. 562, R. 359, S. 663, Sc. 152, E. 130, 131.

News. § 66 ; Macl. 438.

A consignee of cargo can only claim to deduct damages for breach of bill of lading contract when he is proved to be the representative of the charterer, C.A., Genoa, 13, 4, 88, Leggi, 1888, 635.

CHAPTER IV.

Passengers.

582. In default of special provisions, a contract for the carriage of passengers by sea is governed by the following dispositions.

P. 563.

There are special regulations for emigrant vessels contained in laws of 11th February, 1859, and 30th December, 1888. It may be convenient hereafter to compare the regulations as to emigrants in different states, but they are not to the present purpose. There are also provisions in the Mercantile Marine Code, Arts. 290, 300, 333, by which passengers who commit offences on board are subject to the same punishment as members of the crew, and see M.M.C., Tit. II., Chap. VIII.

583. When the voyage is abandoned before the ship starts :—

(1.) If a passenger does not come on board in proper time, the whole passage money is due to the captain.

(2.) If the voyage is abandoned in consequence of the passenger's refusal, death, sickness, or other accident, or by circumstances beyond his control but affecting him personally, half the passage money is due, deducting therefrom the expenses of provisions for the

probable length of the voyage if they were included in the passage money, saving the disposition on this matter of the maritime laws.

(3.) If the voyage is broken up by the captain's act, a passenger has a right to recover damages.

(4.) If it is broken up by accident, or by circumstances beyond the control of the parties concerning the ship, the contract is terminated and passage money paid in advance repaid, but there is no claim to compensation from either party.

See the *Utopia*, C.A., Naples, 10 R.I.D.M. 646, and Art. 661 (note).

B. 127, 128, 129, 130, G. 666, 667, 668, H. 522, 524, 525, 527, S. 694, 696, 697, E. 136, 137, 139, 140, P. 564, Sc. 169, 170.

Macl. 307; M. and P. 716.

584. When the voyage is abandoned after the ship has started:—

(1.) If a passenger disembarks of his own accord at a port of call, he pays the passage money in full.

(2.) If the captain refuses to prosecute the voyage, or is in any other way in fault for the disembarkation of the passenger at a port of call, he is liable to make good the damage.

(3.) If the voyage is broken up by accident, or by circumstances beyond the control of the parties, affecting either the ship or the passenger personally, passage money is due in proportion to the length of voyage accomplished.

No passage money is due from the heirs of a passenger who has died by shipwreck, but passage money paid in advance is not restored.

B. 131, 132, G. 666, 667, 668, H. 525, 527, E. 136, 140, S. 698, P. 565, 566.

Macl. 307-309; M. and P. 703, 729, 730, 735, 736. M.S.A. 1894, 316.

585. If the sailing of the vessel is delayed, a passenger has a right to be berthed and also messed on board during the detention, if messing is included in the passage money, and in addition to recover damages, if the delay is not the result of accident, or of circumstances beyond the control of the parties. If the delay exceeds ten days, a passenger may also rescind the

contract, and in this case the whole of the passage money must be returned to him. If the delay is caused by stress of weather, a passenger can only rescind the contract at the expense of the loss of one-third the passage money.

The fact of the stress of weather is established and stated by the officer of the Marine Administration.

B. 129, 133, G. 671, S. 698, P. 567, 568. See Art. 588*n* (*post*).
Macl. 305, 506, 311; M. and P. 703.

586. A ship chartered for the carriage of passengers exclusively must take them without deviation, whatever their number, to their destination, calling at the places mentioned before the contract was made, or at such as are usual.

If the vessel deviates or puts in anywhere at the wish, or in consequence of the act, of the captain, the passengers continue to be berthed and messed at the ship's expense, and have a right to recover damages, in addition to their power of rescinding the contract.

If the ship has, besides passengers, a cargo of merchandise or other things, the captain may, in the course of the voyage, call at the places necessary for the discharge of such cargo.

See Art. 551*n* (*ante*).
B. 126, H. 529, E. 141, 148, S. 698, P. 569-571.

587. In case of delay during the voyage occasioned either by an embargo ordered by a Government, or by the necessity of repairing the ship:—

(1.) A passenger, if he does not wish to wait for the termination of the delay or repairs, may rescind the contract on paying passage money in proportion to the portion of the voyage accomplished.

(2.) If he prefers to wait till the vessel resumes her voyage, there is no increase of passage money, but he must mess at his own expense during the time of embargo or repairing.

B. 133 diff., G. 669, 671, H. 526, E. 141, P. 572, S. 698. See note to Art. 551.
Macl. 308, 309; M. and P. 722, 731, 736, 737.

588. The messing of a passenger during the voyage is presumed to be included in the passage money. If it is excluded

the captain is bound to supply provisions at a fair price to a passenger who requires them during the voyage.

In voyages to places out of Europe beyond the Straits of Gibraltar and the Suez Canal passengers have a right to remain on board and be messed for forty-eight hours after the vessel has reached its destination, except in the case of the vessel being obliged to sail again immediately.

If the ship's departure is delayed beyond the date stated passengers are entitled to be kept at the expense of the ship until she does sail, C.A., Naples, 7 R.I.D.M. 84.

Cf. B. 121, H. 530 diff., E. 142 diff., S. 702, P. 573.

Macl. 311; M. and P. 733-735, 738. 18 & 19 Vict., c. 99, § 57.

589. If a vessel is chartered wholly or partially for the conveyance of passengers, although the number may not be stated, the rights of the charterer [*noleggiatore*] and of the lessor [*locatore*] are regulated according to the provisions of Chap. III. of the present Title, where such rights are not incompatible with the special object of the contract.

The provisions of the contract of freight apply to articles belonging to a passenger and taken on board, but no special freight is due for them unless so agreed.

It is not necessary for the commander to enter passengers' personal luggage in his manifest, or to declare it at the Custom House, the *Milano*, 8 R.I.D.M. 610.

B. 122, 124, G. 676, 677, H. 532, 533, Sc. 172, 173, E. 143-147, S. 704.

Macl. 308, 310; M. and P. 694, 696. *Cohen* v. *S. E. R. Co.*, 2 Ex. D. (C.A.) 253.

TITLE V.

The Contract of Bottomry.

Properly to understand the nature of this contract in Italian Law, and, indeed, in the law of most Continental States, it must be borne in mind that it covers not only what is considered the contract of bottomry in England, but also to a large extent that of mortgage of ships. When a loan on the security of the ship is contracted by the master for necessaries or repairs (see Art. 595, 509) the law is much the same in all countries; but the owners may under most of the Codes borrow money for any purpose not even necessarily connected with the ship on this security, thus practically constituting the lender a co-adventurer; it is also not limited to a single voyage (590 (6), 601). Formerly this was also the practice in England.

(*Dominion of the Sea*, 2nd Ed., pp. 592-598, 656, 659 661. Molloy, 314. See also *Abbott on Shipping*, 5th Ed., Part II., Chap. III., § 17-21). If the contract is not in writing, it is simply treated as a private loan to the commander, and as a civil not a commercial matter, C.C., Naples, 4 2, 88, *Gaz. Proc.*, xxii. 233. Nor is it deemed to be a loan on bottomry if there be no stipulation as to maritime interest or as to its amount, C.A., Genoa, 2, 3, 90, Temi G., 1890, 267.

Consult also, *La formalità del cambio marittimo necessario*, Benfante, Bologna, 1890. *Prestito a cambio marittimo*, P. Ascoli, Turin, 1891.

Art. 590. A bottomry contract must be in writing; if not so it resolves itself into a mere loan [*mutuo*], and only entitles the lender to interest at the legal rate.

The document must state:—

(1.) The capital sum lent and the sum of money agreed on as interest or maritime premium [*profitto*].
(2.) The articles on security of which the loan is made.
(3.) The name of the ship.
(4.) The name and surname of the captain or master.
(5.) The names of the lender and borrower.
(6.) Whether the loan is for one voyage or for a specified time.
(7.) The time and place for repayment.

B. 135, 140 as to mortgage. F. 311, G. 682, 683, H. 570, P. 626, S. 720, 721, Sc. 177, E. 150.

M. and P. 561. The *Heinrich Bjorn*, 10 P.D. 44, 49.

591. A bottomry bond of a whole ship or a portion of one, when made within the realm, must be registered in the maritime office at the place where it is entered into, and must be noted in the ship's register [*atto di nazionalità*]. If made abroad, it must be registered by the royal consul at the place where it is entered into, and must be noted on the ship's register.

The administrators of the marine and consular officers abroad must forward a copy of the bottomry bond to the maritime office in which the vessel is registered.

They cannot register the bond unless the ship's register is produced.

The captain must take care that bottomry made abroad in the place where there is no consular officer or deputy of

such officer be inscribed in the ship's register by the person who has authorised the bond, or by some other public official [*pubblico ufficiale*] of the place.

A captain who does not establish [*giustifica*] the bond by carrying out this form is personally liable to pay the maritime interest. The original bond, or an office copy, must be forwarded, with an office copy of the document authorising it, to the nearest consular officer, who must register the documents and forward them to the maritime office above mentioned.

The contract is only of effect with regard to third parties from the time of its being noted in the ship's register. In the cases for which provision is made by Arts. 489 and 509, the regulations of those Articles are applicable as well.

This most useful and simple provision of endorsing the fact of the bond on the ship's register is unknown to English law in the case of bottomry, though a regulation, in many respects similar, exists in case of mortgage. M. and P. 55.

Registration does not apply to bonds on cargoes only, *Banque de Genes* v. *Wedekind*, 6 R.I.D.M. 585.

B. 139, 140, as to mortgage, 156. F. 312, H. 571, 572, P. 590, S. 583, 720, E. 151, 152, Sc. 178.

592. A bottomry bond "to order" [*all' ordine*] may be negotiated [*trasferito*] by being endorsed.

The form and effects of an endorsement [*girata*] are regulated by the provisions of Book I., Title X.

The security for payment covers the maritime premium [*interesse marittimo*] unless otherwise agreed. (See Book I., Tit. X., *post*).

B. 144, as to mortgage, 162, 163 diff., F. 313, 314 diff., G. 684, H. 573, P. 627, S. 722, E. 154 diff.

Ros. 93; Macl. 56; M. and P. 573.

An ordinary bottomry bond made by a simple signed writing, even if drawn to order, and therefore transferable by endorsement, differs from a bill of exchange in some respects, as it does not confer a right of execution without further legal process, *Rodrigoes* v. *Patti*, C.A., Genoa, 9 R.I.D.M. 288.

593. Bottomry may be effected upon:—

(1.) The hull and keel of a ship [*nave intiera*] or on a share in it only.

(2.) The apparel [*attrezzi*] and furniture [*corredo*] and stores [*armamento*].

(3.) The freight [*nolo*].

(4.) The cargo [*carico*] or a distinct portion of it.

(5.) The ship, freight and cargo jointly.

Mariners and those who follow the sea cannot borrow on bottomry on their wages or shares.

If, notwithstanding, such a loan is effected, the lender is only entitled to be repaid his capital without any interest.

B. 137, as to mortgage 157, F. 315, G. 679, 680, H. 574, 575, 577, R. 381, P. 586, 628, S. 724, 725, Sc. 175, E. 155, 159.

Ros. 87; Macl. 55; News. 134; W. and B., Ch. III.; M. and P. 561-563.

The goods bottomried are the sole security for the loan; if the goods were sufficient to cover the loan in the first instance but do not realise enough the lender has no claim for the balance, C.C., Florence, 7, 4, 84, D.C. 84, 497, if originally insufficient see next article.

594. A loan on bottomry effected for a sum greater than the value of the things on which it is made, is valid up to the amount at which these articles were assessed or agreed. The remainder of the loan is repaid with interest at the current rate of the place [*corso di piazza*].

If, however, there is fraud on the part of the borrower, the lender is entitled to require that the bond be cancelled, and money borrowed restored with the interest above mentioned. Anticipated profit on goods shipped is not deemed to be an excess in value, if expressly declared.

Such fraud was formerly punishable in certain cases with death in England (Molloy, 315).

B. 158, F. 316, 317, 318 diff., H. 576, P. 629, S. 726, E. 156, 157, 158.

595. Bottomry can only be made by the owners of the articles bottomried, or by persons having their special authority for this purpose, with the exception of the powers vested in the captain by Arts. 507 and 509.

But bottomry of foreign vessels is governed by the law of the flag, C.C., Florence, 23, 11, 93, 26 J.D.I.P, 192.

B. 156 diff., F. 321, 322 diff., G. 679, diff., H. 579, 580, P. 586, 628, S. 728, E. 161, 162, R. 383.

See W. and B., 2nd Ed., p. 45, and note (s).

596. After the date on which the capital lent and the maritime premium become due, interest on the sum total is due only at the official rate.

B. 161, G. 687, S. 736 diff., Sc. 182.
Ros. 92, W. and B., 2nd Ed., 65.

597. If the voyage is abandoned before the risk begins, the borrower must repay the money with interest at the official rate from the day it was lent.

But if the voyage is broken up by his own act, he pays interest at the current rate, if that exceeds the official rate, and he must also give the compensation due to the assurer if the loan was insured.

G. 698 diff., H. 586, 587, S. 729, Sc. 186, E. 169.

598. A lender on bottomry does not undertake the risk of deviations in the voyage or of a different voyage or ship from that stated in the bond, unless the alteration is necessitated by an accident [*caso fortuito*] or circumstance beyond the control of the parties [*forza maggiore*]. Similarly, the lender does not undertake the risk where any concealment or false statement on the part of the borrower causes him to depreciate the perils, or changes them. A change of the captain or master, even though discharged by the owners, does not invalidate the contract, unless so agreed.

G. 693, H. 582, 587, S. 731, Sc. 180, E. 164.

599. If the articles bottomried become a total loss by a casualty, or through circumstances beyond the control of the parties, within the time and place of the risks undertaken by the lender, the borrower is free.

In case of a partial loss, the payment of the loan is reduced to the value of the goods bottomried and salved, less salvage and such privileged debts as have a legal preference. When the loan is on freight, in case of a casualty payment is reduced to the sum due from the charterers [*noleggiatori*], less the wages of the crew for the last voyage, and share of salvage paid.

If the article bottomried is also insured, the value of what is saved is divided between the lender on bottomry and the insurer, in proportion to the capital sum lent only and the amount insured, respectively.

Bottomry only confers a right *in rem*, it gives no personal claim, C.C., Florence, 1 R.I.D.M. 64.

The "value of what is saved" includes compensation paid for collision damage, C.C., Turin, 31, 12, 87, D.C., 1888, 215.

This last clause enacts a decree of the Court of Appeal, Genoa, 2 R.I.D.M. 740.

If a ship, the freight of which is bottomried becomes unseaworthy in the course of a voyage and freight is paid *pro ratâ itineris*, the borrower is free from further payment on abandoning to underwriters, but when the cargo reaches its destination and freight is paid or due, he must pay up the loan in full even beyond the value of the net freight, 27, 12, 88, C.A., Genoa; Temi G., 1889, 92.

B. 164, 165, F. 325, 327, 331, G. 679, 690, H. 569, 588, P. 630, S. 719, 731, 734, 735, E. 149, 165, 167, 172, Sc. 174.

Ros. 91; Macl. 57; News. 137; W. and B., 2nd ed., 56; M. and P. 572.

600. A lender on bottomry does not sustain losses and damages which happen in consequence of the inherent vice of the article bottomried, or which are caused by the borrower's act.

F. 326, H. 587, S. 731, E. 166, Sc. 180.

601. If the period of the risk is not stated in the bond, it runs :—

(1.) In regard to the ship and its appurtenances [*accessorii*], and also to the freight, from the time the vessel goes out of port until the day on which she is anchored or moored at her port of destination.

(2.) In regard to goods, the period of the risk runs from the time they are loaded on board ship or in lighters to take them to the ship, until the day when they are delivered on shore at their destination.

F. 328 Id., G. 687, H. 585, P. 633, S. 733, E. 168.

602. A person who borrows on bottomry of goods carried is not freed by the loss of ship and cargo, unless he proves that he shipped on his own account goods at least equal in value to the sum borrowed.

F. 324, 329, S. 729, E. 170.

603. Lenders on bottomry contribute to general average, and clear the borrowers to that extent; any agreement to the contrary is null.

Particular averages are not chargeable to lenders on bottomry, unless so agreed, but if, in consequence of a particular average, the articles bottomried are insufficient to satisfy the creditor, the latter sustains the damage resulting therefrom.

B. 166, 167 diff., F. 330, G. 690, 723, H. 589, P. 631, S. 732, Sc. 179 diff., E. 171.

TITLE VI.

Insurance against Perils of Navigation.

Cf. Il contratto di assicurazione, by C. Vivanti, Prof. of Commercial Law in the University of Bologne, Vol. II., Milan, O. Hoepi, 1890.

CHAPTER I.

The Contracts of Insurance and Obligations of the Insurer and Assured.

604. The regulations established by Book I., Title XIV., are applicable to insurances against perils of navigation so far as they are not incompatible with marine insurances nor modified by the following provisions. Associations for mutual marine insurance are further subject to the provisions of Title IX. of the same book.

(See these Titles *post.*)

A policy of insurance may include provisions not contained in the Code, 8 R.I.D.M., 154. Re-insurance is a valid contract in Italy, C.A., Palermo, 7 R·I.D.M., 708.

605. A policy of insurance in addition to what is requisite under Art. 420 must show:—

(1.) The name, description, nationality, and tonnage of the vessel.

(2.) The name and surname of the captain or master.

(3.) The place at which the articles insured have been, or are to be, loaded.

(4.) The harbour or roadstead whence the vessel sailed, or is to sail.

(5.) The harbours or roadsteads in which the vessel is to load or discharge and at which she is to call.

If it is not possible to state the above circumstances, either because the assured is not in a position to do so, or from the special nature of the contract itself, their place must be supplied by others sufficient to indicate clearly what the subject-matter of the insurance is.

F. 332, G. 784. H. 256, 592, P. 596, S. 738, E. 174, R. 550.
News. §§ 132, 134, 135; M. and P. 447, 451; Arn. Pt. I., Ch. V.
See note to Art. 606.

606. The insurance may be upon :—

(1.) A steam or sailing ship, empty or loaded, fitted out or laid up, alone or under convoy.

(2.) The engines, furniture and apparel, equipment, stores and provisions.

(3.) Passage money and freight.

(4.) Goods shipped.

(5.) Money lent on bottomry [*cambio marittimo*].

(6.) Money paid or to be paid for general average and disbursements made or to be made for particular average when not covered by bottomry.

(7.) And on all other things and values capable of being estimated in money in general, subject to the perils of navigation.

An insurance may be made on the whole or a part of the above-mentioned things, together or separately.

The fact that a bill of lading is shown to insurers when the policy is made out, and that it is initialled by them does not incorporate its terms in the policy, C.C., Turin, 8 R.I.D.M. 418.

An insurance may be on goods generally without specifying the ship in which they are to be carried or the person to whom they are to be delivered, C.A., Genoa, 8 R.I.D.M. 423.

An insurance against the risk of launching covers damages occasioned by a failure in the operation of launching which causes the vessel to remain on the ways, C.C., Turin, 3 R.I.D.M. 370.

A mutual insurance contract may forbid the insurance of freight, the *Lorenzo*, C.A., Genoa, 9 R.I.D.M., 291.

B. 168, F. 334, 335, 347 (1885), G. 778, 779, H. 593, 599, P. 597, R. 545, S. 740, 743, 744, E. 176, 190, Sc. 230.

News. § 130 ; M. and P. 462-467 ; Arn. Pt. I., Ch. II.

607. The insurance is null if made upon :—

(1.) The wages of seamen.

(2.) Money borrowed on bottomry.

Goods on which money has been borrowed on bottomry [or *respondentia*] can only be insured for the excess of their value over the sum borrowed.

B. 168, 176, F. 347 (1885), G. 780, 803, H. 599, 600, P. 600, S. 781, E. 190. News. § 130 (5), (6) ; M. and P. 465, 467 ; Arn. 40, 79, 80.

608. If there are several insurance contracts in existence, made without fraud on the same cargo by different persons having interests in it, or by several agents of the same interested

person, who have acted without special orders [*incarico speciale*], all the insurances are valid up to the value of the goods. The persons interested have a right of action against each of the insurers at their own option, saving the right of the insurer who has paid to recover from the others in proportion to their interest.

F. 359 diff., G. 787-789, H. 277, 278, S. 758 diff., R. 546, 582, Sc. 235, E. 201.

News. § 184 (2); M. and P. 461; Arn. 310, 312.

609. An insurance may be made in peace time or war time, before or during the ship's voyage.

It may be for a whole voyage or for a definite period.

It may be for a voyage out and home, or only for one of the two.

A time insurance [*assicurazione a tempo*] is deemed to cover any voyage, or any period during which the ship is laid up [*stazione*] during the agreed term, saving special agreements.

In a time policy the day on which it expires is not covered, C.A., Lucca, 27, 5, 84, Ann., 1884, 318.

News. §§ 133, 134, 137, 148 (3); M. and P. 459, 460; Arn. Pt. I., Ch. VIII. P. 598, S. 744.

610. An increase of premium agreed to in time of peace, the case of war happening, and the amount of which is not settled by the insurance contract, is regulated by the courts, taking into consideration the perils and circumstances and stipulations of each policy of insurance.

B. 173, F. 343, H. 661, P. 604., § 3, S. 767, E. 186.

611. If the period of the risk is not settled by the contract of insurance the following rules are observed :—

In time insurances the risks begin to run from the date of the policy and terminate at the time agreed.

In voyage insurances [*assicurazioni a viaggio*] the risks begin and terminate at the time pointed out in Art. 601.

But if the insurance is made after the voyage has commenced, the risk runs from the date of the policy.

If the discharge of the goods is delayed by the default of the consignee, the insurer's risk ceases a month after the vessel's arrival at her destination.

A voyage policy, however, which only contemplates touching at

ports of call, is vitiated by a prolonged stay in such a port under the provisions of Arts. 429, 432 (*post*), and 604 (*ante*), C.C., Turin, 28, 4, 97, 13 R.I.D.M. 219. A policy which is to begin to run when the ship arrives at a certain place is not operative if the ship is run ashore, or lost on her arrival, or deserted by her crew there, C.A., Genoa, 12, 12, 96, 12 R.I.D.M. 590.

B. 172, F. 341, H. 624, G. 823-830, P. 602, R. 557-559, S. 761, 762, E. 184. See note to Art. 609 (*ante*).

News. §§ 133, 145-147; M. and P. 469-474; Arn. Pt. I., Ch. IX.

612. Goods, when loaded, may be insured:—

Either for their cost price and expenses of shipment and freight, or for their current price on arrival undamaged at their destination.

A valuation made in the contract for goods loaded, without further explanation, may be attached to either of these cases, and Art. 428 is not applicable if it (the valuation) does not exceed the higher of the above-mentioned values.

This valuation is always deemed to be made on the (faith of) declaration of the assured, if it has not been preceded by a valuation accepted by the insurer, and on that account is subject to the rule laid down in the second clause of Art. 435.

For Arts. 428, 435, see (*post*) App.

B. 187, F. 339, G. 786, 793, 799, 801, H. 612-614, 619-623, P. 601, S. 751, 752, E. 182, Sc. 233, 238.

News. § 133; M. and P. 457-459, 545; Arn. Pt. I., Ch. VI.

613. If the values of the things insured are agreed to in foreign money, they are reckoned in coin of the realm at the rate of exchange at the time when the policy was signed, if there is no agreement to the contrary.

B. 170, F. 338, S. 753, E. 181.

614. If the voyage is given up before the vessel sails, even though by the act of the assured, the insurance is annulled.

The insurer receives as compensation half the premium agreed on, but not exceeding one-half per cent. of the sum assured.

B. 177 and note, F. 349, G. 813, 894, H. 635, R. 578, S. 889, 890, Sc. 265, E. 191.

News. §§ 142, 145, 180; M. and P. 555; Arn. 419.

615. All losses and damages which happen to the things insured by bad weather, shipwreck, stranding [*investimento*],

collision [*urto*], compulsory deviations, changes of voyage or of vessel; by jettison [*getto*], explosion, fire, capture, piracy, and in general by all other perils of the sea, are at the risk of the insurer.

An insurer is not answerable for losses and damages which are the result of the inherent vice alone of the thing insured.

The insurer is answerable for a deviation caused not by the owner, but by the master, C.C., Turin, 8 R.I.D.M. 418. Explosion is intended by legislature to cover all injuries to engines of a steamer, C.A., Genoa, 15, 9, 83, Ann., 1884, 40. A policy may contain provisions which are not in the Code, 8 R.I.D.M. 154, C.C., Florence, 1 R.I.D.M. 256, C.A., Genoa, 1 R.I.D.M. 254, C.A., Naples, 2 R.I.D.M. 742, C.A., Genoa, 9 R.I.D.M. 290.

Loss not only by the perils themselves but by the consequences of the perils is covered, C.A., Genoa, 1 R.I.D.M. 58, 15, 9, 83, Ann., 1884, 40.

When a vessel sinks in fine weather and a calm sea, inherent vice or unseaworthiness at the commencement of the voyage is presumed, but may be rebutted by evidence of official surveys shortly before, C.A., Genoa, 2 R.I.D.M. 216, C.C., Florence, 15, 5, 84, Ann., 1884, 283.

When the risks insured against are not stated in the policy, they are presumed to be all sea perils, C.C., Palermo, 12, 6, 94, 23 J.D.I.P. 215.

B. 178, F. 350, G. 820, 821 H. 637, 647-649, P. 604, 614, S. 755, 756, Sc. 248, 249, R. 539, 572, E. 192.

News. § 148, 149, 166; M. and P. 480-490; Arn. Pt. III., Ch. II.

616. War risks are not on the insurer unless so expressly agreed, if he has taken war risks without specifying them precisely he is answerable for losses and damages occasioned to the things insured by hostilities, reprisals, embargoes [*arresti*], capture [*preda*], and all sorts of annoyances [*molestie*], on the part of a Government, whether friendly or hostile, *de jure* or *de facto*, recognised or not recognised, and in general for all the incidents and accidents of war.

B. 179, 180, F. 350, G. 820, 848, 849, H. 647-649, P. 604, § 2, S. 755, Sc. 248, E. 186.

News. §§ 148 (3-5), 149; M. and P. 485; Arn. 696-703.

617. A deviation, or change of voyage or vessel, proceeding from the act of the assured, is not at the risk of the insurer, and the premium belongs to him if the time of his risk has begun. (See notes to Arts. 611 and 615 *ante*.)

A change of captain or master, even when discharged by the owners, does not invalidate the insurance, except in accordance with the provisions of the next Article.

See M.M.C. 120 (*post*).

B. 182, F. 351, G. 813, 815, H. 638, 639, P. 608, E. 193, S. 756, Sc. 248, 254, 255.

News. §§ 142, 148 (7), 165, 177; M. and P. 138, 476-479, 452; Arn. Pt. I., Ch. X. and 228, 325.

618. The insurer is not liable for the deceits and offences of the captain and crew known under the name of barratry [" *baratteria* "], unless so agreed.

Such an agreement is rendered null if it relates to a captain mentioned by name in the contract, if the assured discharges him and replaces him by another without the insurer's consent.

B. 184. F. 353 diff., G. 820, H. 637, 640, 641, P. 604, § 1, S. 756, Sc. 248, R. 539, E. 195.

News. §§ 148 (7), 149, 151; M. and P. 452, 490; Arn. 705.

The proof of barratrous conduct is upon the insurer. C.A., Genoa, 2 R.I.D.M. 736. See note to Art. 558.

The expression barratry seems to have a somewhat wider meaning on the continent of Europe than in English law, 7 R.I.D.M. 319, 410, 10 R.I.D.M. 319, 410.

619. The insurer is not liable for the expenses of navigation, pilotage, laying the vessel up for the winter [*svernamento*], quarantine, nor for any species of taxes or dues imposed on the vessel and cargo.

"Quarantine," see Art. 644 (2) (*post*).

F. 354, G. 621, H. 708, P. 607, E. 196, R. 392, 393, 572.

News. § 124, 150; M. and P. 431; Arn. 786, 823.

620. If the policy is on goods out and home, and if, when the vessel has reached its first destination, it does not load a cargo, or if it does not load a full cargo for the return voyage, the insurer only receives two-thirds of the agreed premium, unless otherwise agreed.

B. 186. F. 356, S. 757, E. 198, P. 609, R. 579.

M. and P. 459, 471; Arn. 365.

621. If the insurance is divisible on goods to be shipped in several vessels which are named, with a statement of the amount insured on each, and if the whole shipment is made in one vessel or on a smaller number than stated in the contract, the insurer is only liable for the amount which he has assured on the vessel which has received the shipment, notwithstanding that all the vessels mentioned may be lost. Nevertheless, he has a right to the compensation allowed

by Art. 614 for the amounts the insurances of which are rendered null.

B. 194, F. 361, G. 817, H. 652, P. 610, S. 759, E. 293, R. 585.
M. and P. 451, 452, 457; Arn. 318-321.

622. If the captain is at liberty to go into various ports to fill up or change (*cambiare*) his cargo, the insurer does not undertake the risk on the articles insured, except during the time they are on board, unless there is an agreement to the contrary.

F. 362, E. 204, P. 611.
News. §§ 146, 166; M. and P. 471; Arn. 357, 364.

623. The insurer's risk ceases, and the premium belongs to him, if the assured sends the vessel to a more distant port than that mentioned in the contract, even though it be in the same direction.

The insurance is of full effect if the voyage is shortened, when the vessel puts into a port where she can be repaired.

B. 195, F. 364, G. 813, H. 653, P. 612, R. 579, S. 756, 763, Sc. 254, 255.
News. §§ 143, 144, 166, 177; M. and P. 475-479, 556; Arn. 345-349.
See note to Art. 611 (*ante*).

624. The sum which an insurer is bound to pay is limited to the amount of the insurance. If the goods which are insured sustain several disasters in succession during the period of the insurance, even in case of abandonment, the assured must always give credit for the amounts which have been paid or are due to him for the previous disasters.

G. 840, 841, 844, S. 775, P. 603, Sc. 233, 253, R. 568.
News. §§ 158, 175, 458; M. and P. 527; Arn. 841, 874.
A survey and estimate of what is necessary to make a ship seaworthy, does not bind the assured, who may claim in addition what is necessary to reclass, 8 R.I.D.M. 607, C.A., Genoa.

625. The expression "free from average" [*franco d'avarid*] frees the insurer from all general and particular average, except in cases which allow an abandonment. In such cases the assured has the option between abandoning and taking proceedings (to recover) the average.

B. 198, F. 409, G. 845-851, H. 646, 719, 720, P. 613, R. 574, E. 244.
News. § 150; M. and P. 491, 528; Arn. 735, 739.

626. The assured must give notice to the insurer of any

information which he may receive, for the purpose of verifying any damage for which he is liable. The notice must be given within three days of the receipt of the information, under penalty of paying for the damage.

The assured on cargo is under the same obligation, when the vessel is condemned as unseaworthy, even though the cargo has not sustained damage by the disaster.

B. 206, F. 374, G. 818, H. 654, 673, P. 615, R. 560, S. 765, Sc. 245, E. 214.

If notice of the first bad news is given the condition is fulfilled, C. A., Venice, 1, 3, 84, D. C., 1884, 570. The non-fulfilment of the duty to give notice only effects the question of damages, it does not bar the right to abandon. C. A., Genoa, 4, 12, 85, Eco. Giur., 1885, 5.

627. The assured must give notice to the insurer, within three days of their receipt, of the documents which prove that the goods insured were subject to the perils insured against and were lost.

The insurer may bring evidence of facts in opposition to those which are deduced from the documents produced by the assured. The permission to bring such evidence does not stay judgment against the insurer to pay the sum insured in the meanwhile, provided the assured gives security [*cauzione*].

The security lapses after four years if no judgment has been obtained against it.

B. 214, 215, F. 383, 384, G. 882, 884, P. 615, S. 769, E. 221, 222, R. 561, Sc. 245.

Failing the log and captain's deposition, etc., the loss may be proved *aliunde*, C.C., Turin, 10, 8, 86, Giur, 1886, 632. Payment cannot be suspended on the ground that the loss was a general average loss, and has not yet been adjusted, C.C., Palermo, 23, 10, 84, 1 R.I.D.M. 59.

628. In case of loss of goods insured and loaded on the captain's account on board the vessel which he commands, the captain must prove the purchase of the goods by the methods of proof allowed by the Commercial Law, and their shipment by a bill of lading signed by two of the principal members of the crew.

A member of the crew or a passenger who brings insured goods from foreign countries into the realm must leave a bill of lading with the royal consul at the place where the shipment was made, or, failing him, with one of the principal

national [Italian] merchants, or with a person in authority in the said place.

See Arts. 44, 53 (*post*) App.

B. 174, 175, F. 344, 345, P. 599, S. 766, E. 187, 188.

News. §§ 70, 130 (6), M. and P. 122, 465, 494; Arn. 25, 40, 42, 80, 81.

629. In case of a disaster of any description the captain and the assured, or his agent, are bound to work for the recovery and preservation of the goods insured without prejudice to their claim against the insurers. The expenses must be repaid up to the value of the goods recovered.

The insurers, or their agents, may make provision either in concert with the captain and the assured, or their representatives, or by themselves, for the recovery of the goods insured or for their preservation, without prejudice to any claim (they may have).

See note to Art. 434 (*post*) App.

G. 819, H. 655, S. 779, 795, Sc. 246, 252.

News. §§ 134, 139, 157; M. and P. 159, 543, 490; Arn. 343, 871, 873.

630. The assured, when he gives notice to the insurer of information he has received, may reserve the right of making a separate demand for the payment of what may be due to him in consequence of the insurance.

B. 210, F. 378, E. 216.

M. and P. 539; Arn. 524, 527, 853.

631. An insurer must pay the amount due:—

In case of particular average, within thirty days from that on which the settlement of the accounts relating thereto was notified to him.

In case of abandonment, within two months from the time when the abandonment took place.

But the assured must, within these periods, prove the fact of the disaster which has given rise to the legal claim for average or on abandonment.

If the claim is resisted each of the defendants, and also the assured, may require that the amount be placed on deposit.

B. 213, F. 382, G. 887-893, H. 680, S. 770, 805, R. 562, 563, 564.

M. and P. 546; Arn. 983, 1069.

In the absence of ship's log, etc., the circumstances can be proved by witnesses, Art. 44 (see *post* App.), C.A., Genoa, 1 R.I.D.M. 658, C.C., Turin, 10, 8, 86, Giur., 1886, 682.

An insurer must pay in full for goods lost by jettison, until he does so he has no right to contest the question of general average contribution, 1 R.I.D.M. 59, C.C., Palermo.

Whether expenses reasonably incurred, but in fact useless, can be recovered from underwriters appears doubtful, there being conflicting decisions of the Court of Cassation of Turin on the subject, the last, however, is in favour of the payment. C.C., Turin, 6, 2, 87, Giur. 1887, 529, 9, 7, 89, Ann. I., 486.

The time allowed to the assured to prove the fact of the disaster leaves the obligation of showing the goods were exposed to the risk at the time intact, C.A., Genoa, 4, 12, 85, Eco. Giur., 1886, 5. Underwriters cannot deduct money borrowed on bottomry from the amount insured, C.A., Genoa, 3, 8, 83, Eco. Giur., 1884, 4.

Chapter II.

Abandonment.

632. The things insured may be abandoned in the following cases :—

(1.) Shipwreck.
(2.) Capture.
(3.) Arrest by order of a Foreign Power.
(4.) Arrest by order of the Government subsequent to the commencement of the voyage.
(5.) Unseaworthiness, if the vessel cannot be repaired, or if the expense necessary to refit and repair her and put her into a condition to resume her voyage amount to three-quarters at least of the value insured.
(6.) Loss or deterioration of the things insured amounting to at least three-quarters of their value.

In any other case the assured can only require to be reimbursed for the average loss he has suffered.

B. 199, F. 369, G. 861, H. 663, 666, P. 616, R. 563, S. 773, 781, 789, E. 211, Sc. 6, 256, 257.

News. § 151, 152; M. and P. 484, 541-543; Arn. 13, 846.

If a shipowner recovers as general average the share of the cargo due for salvage, the underwriter is freed to this extent and only the residue falling upon the ship is reckoned in considering if the loss is three-quarters for purposes of abandonment, C.C., Turin, 3 R.I.D.M. 371. But if after salvage services the assured abandons, he can bring the amount paid for salvage into account in calculating the three-quarters, as he was acting as their agent in engaging the services (C.C., Florence, 2 R.I.D.M. 732).

Proceedings to abandon do not bar an action for average, but the

time during which an action is permissible runs continuously for both, C.A., Genoa, 9 R.I.D.M. 294.

Where the ship is a total loss but cargo is saved, so that three-quarters of the freight is not lost, there is no total loss of freight, *Becker* v. *Cie. Mannheim*, 6 R.I.D.M. 338. But where the difference between freight earned and that paid is insured and no freight is earned, the insurer is liable, C.C., Palermo, 5 R.I.D.M. 695.

As to what constitutes a constructive total loss in Italian law, see C.A., Genoa, 2 R.I.D.M. 736, 15 R.I.D.M. 252, C.C., Florence, 9, 2, 85, D.C., 1885, 372, 3 R.I.D.M. 371.

The policy may restrict or amplify these conditions, C.C., Florence, 1 R.I.D.M. 256; C.A., Naples, 2 R.I.D.M. 742, C.A., Genoa, 1 R.I.D.M. 254.

Notice of abandonment and action of abandonment are distinct, the former transfers the property in the insured articles to the insurer, the latter is a judicial demand for the sum assured. There are no special provisions for it, it is merely an action arising out of a contract of insurance, and therefore barred by the lapse of a year (Art. 924 *post*), C.A., Lucca, 27, 5, 84, Ann., 1884, 318, and see Art. 642 (*post*).

In estimating the three-quarters value of a ship, the cost of opposing a demand to arrest the ship for collision damage or other expenses cannot be included, C.A., Genoa, 3, 8, 83, Temi V., 1885, 162, and of goods the intrinsic loss of value only must be considered, C.C., Florence, 9, 2, 85, D.C., 1885, 372, but in estimating whether the ship is worth repairing at all, all expenses are reckoned, 15 R.I.D.M. 253.

Claims for abandonment and average may be brought in the same action, but if only one is claimed an amendment to include the other will not be allowed at the hearing, C.C., Turin, 20, 2, 85, Giur., 1885, 192, but see C.A., Naples, 19, 4, 89, D.C., 1889, 531, where it was held that they could not be brought together.

The word "shipwreck" [*naufragio*] means any disaster to a ship which renders her permanently unfit for navigation, C.C., Florence, 15, 5, 84, Ann., 1884, 283.

633. The assured may abandon without proving the loss of the ship if, in ocean voyages a year, and in other voyages six months, have elapsed from the day on which she sailed, or from that on which the last news was received of her.

In the case of time insurance [*assicurazione a tempo limitato*], when the periods above mentioned have elapsed, the loss of the vessel is presumed to have happened within the period of the insurance.

If there are several successive insurances, the loss is presumed to have happened on the day following that to which the latest news (of the vessel) relates.

B. 207, 208, F. 375, 376, G. 862, H. 667, 674, P. 605, 617, R. 563, S. 798, 799, E. 215, Sc. 258.

News. §§ 33, 151, 152; M. and P. 484, 540; Arn. 682, 853-858, 913.

Other cases of presumption, C.C., Palermo, 1 R.I.D.M. 59. The last clause is also applicable where there is only one policy but successive valuations, C.A., Genoa, 20, 5, 87, Eco. Giur., 1887, 277.

634. If the ship is abandoned as unseaworthy, the goods which are insured on board her may be abandoned when within the three months succeeding the condemnation no other vessel can be obtained on which to reload the cargo and have it carried to its destination.

If the ship is abandoned as unseaworthy the cargo owner need not wait the termination of disputes between shipowner and underwriters, but may treat the contract of carriage as at an end, and carry on the goods himself, the *Cartonne*, 4 R.I.D.M. 339.

B. 223, 224, 227, F. 390, 391, 394, H. 673, 478, P. 618, S. 792-794, E. 228, 229.

News. § 154; M. and P. 529, 532; Arn. 338, 341, 949, 950.

635. If, in the case provided for in the preceding article and in Art. 514, the goods are loaded on board another vessel, the insurer must pay for damages which they sustain, the expenses of unloading and reloading, of warehousing and watching them, the excess of the (new) freight, and all other salvage charges, up to the amount of the sum assured, and if it is not exhausted by these, the insurer continues to bear the risk for the amount of the surplus.

B. 225, 226, F. 392, 393, G. 827, 828, H. 628, 632, P. 618, S. 792-794, E. 230, 231, R. 584.

News. § 154; M. and P. 542; Arn. 341, 732.

636. In case of embargo by order of a Government or in case of capture, an abandonment of the things under embargo or captured cannot be made until three months have elapsed from the news of the disaster, if it has happened in the Mediterranean, or Black Sea, or in any other European sea, in the Suez Canal, or in the Red Sea, nor until six months from the news, if the disaster has happened elsewhere.

For such cargo as is perishable, the periods mentioned above are reduced by one-half.

B. 220, F. 387, G. 861, H. 663, 665, 668, 673, P. 619, S. 795, E. 225, Sc. 259.

News. §§ 153-155; M. and P. 488, 489; Arn. 676, 928, 945, *Rodonachi* v. *Elliott*, L.R. 8 C.P. 649; L.R. 9 C.P. 518.

637. An abandonment to the insurer must be made within the time following:—

Three months from the day on which information of the disaster is received, if it has happened in the Mediterranean, or the Black Sea, or in other European seas, the Suez Canal or the Red Sea; six months if it has happened in other African seas, the West or South of Asia, and the Eastern seaboard of America.

One year, if the disaster has happened elsewhere.

In case of embargo by a Government, or in case of capture, these periods only begin to run when those laid down in the preceding article terminate. When these periods have expired, the assured is not permitted to abandon, saving (his right) to proceed for the average.

An abandonment made to the agent of the insurer is valid, even if at the time he has ceased to be agent, if the assured has no notice of the fact, C.A., Lucca, 27, 5, 84, Ann. 1884, 318.

B. 203, 220, F. 373, 387, G. 864, H. 663, 665, 667, 668, 671, P. 620, S. 804, E. 213, 225, Sc. 260.

News. § 152; M. and P. 540; Arn. 853, 913, 914.

638. The assured may, at the time of giving notice of information which he has received, either abandon, and claim payment from the insurer of the sum assured within the time settled by the contract or by law, or he may reserve (his right to abandon) for the legal periods.

When making an abandonment, he must state the insurances effected or ordered, and the sums of money borrowed on bottomry.

In default of so doing, the time for payment only runs from the day on which such statement is made, but the period in which to take proceedings for abandonment is not prolonged.

If the statement be fraudulent, the assured loses all rights derived from the contract of insurance.

B. 210, 211, F. 378, 379, H. 675, P. 621, S. 800, 804, E. 216, 217.

19 Geo. II., c. 37, § 6; News. § 129; M. and P. 552; Arn. 310, 855, 1038.

Notice of abandonment must be given by the assured himself, not by the master, and must be served formally by an officer of the court, *Lloyd Sicilien* v. *Cudia*, 6 R.I.D.M. 587. If there are no other insurances and no loans on bottomry it is unnecessary to state the fact, C.C., Turin, 15, 5, 88; Guir., 1888, 357.

639. Things insured cannot be abandoned partially or conditionally.

Only things which are the subject of the insurance and the risk are comprised in it (the abandonment).

An abandonment of ship must include freight of goods salved, and what has been paid in advance. The insurer is entitled to be placed in the same position exactly as the assured was at the moment of abandoning, C.A., Genoa, 3, 8, 83. Eco. Giur., 1884, 4. It must also include freight paid *pro ratâ itineris*, C.A., Genoa, 27, 12, 88, Temi, G. 1889, 92, less expenses, the onus of proving which is on the assured, the insurer can deduct freight paid from the insurance, C.A., Genoa, 10, 3, 96, 12 R.I.D.M. 224, but need not include freight where its insurance is prohibited, C.A., Genoa, 9 R.I.D.M. 290.

Where an abandonment is accepted unconditionally, and payment is only reserved until proof of value is given, the property passes to the insurer, and the assured deals with it at his own risk, it is no defence to say after he has repaired it that the repairs did not cost $\frac{3}{4}$ of the value, and that therefore the abandonment was invalid. C.A., Genoa, 20, 11, 88. Temi G. 1889, 25.

B. 202, F. 372, G. 866, H. 677, P. 622, S. 804, E. 212, Sc. 262.

News. §§ 156; M. and P. 939; Arn. 847.

640. The things insured belong to the insurer from the day when a notice of abandonment was made which has been accepted or declared valid. The assured must deliver to the insurer all documents which relate to the said things.

The insurer cannot, under the excuse of the ship's return, avoid payment of the sum assured.

B. 216, F. 385, G. 868-871, H. 678, P. 623, 624, R. 569, S. 803, Sc. 263, E. 223.

News. §§ 156, 157; M. and P. 541-543; Arn. 863, 969.

Notice of abandonment to be valid must be formally served on the insurer at the instance of the assured by an officer of the Court, *Lloyd Sicilien* v. *Cudia*, 6 R.I.D.M. 587, C.A., Palermo.

An abandonment accepted by the agent of the insurers binds them, C.A., Genoa, 16, 6, 99, 15 R.I.D.M. 253.

Privileged debts retain their lien on the vessel in the hands of the insurer, C.A., Genoa, 1 R.I.D.M. 657.

There is a notable difference between the effects of an abandonment to underwriters under this section, and one to creditors under Art. 491, see note to the latter article (*ante*).

On an abandonment to underwriters properly made the property passes by effect of law to the underwriters, and therefore they are bound to pay all expenses incurred after a proper abandonment, even the wages of the crew, and even if they are in excess of the sum assured, C.C. Turin, 3, 12, 96, 12 R.I.D.M. 595, and 12, 3, 97, 13 R.I.D.M. 214, but not those

incurred before as *e.g.* salvage, C.A., Genoa, 30, 12, 85, Eco. Giur., 1885, 44, or wages, C.C. Turin, 12 R.I.D.M. 595.

641. In case of capture, if the assured is not able to give notice to the insurer, he may ransom the things which are captured without waiting for instructions.

But the assured must, as soon as possible, inform the insurer of the arrangement made. The insurer has the option of taking up the agreement on his own account, or of renouncing it; he must give notice to the assured of his choice within twenty-four hours of receiving notice of the agreement.

If he decides to take up the agreement on his own account, he must contribute without delay to the payment of the ransom, according to the agreement and in proportion to his interest, and continue to incur the risk of the voyage in accordance with the contract of insurance. If he decides to renounce the agreement, he must pay the amount assured, but cannot lay claim to the articles ransomed.

When the insurer has not given notice of his choice within the time above mentioned, he is deemed to have renounced the advantages of the agreement.

G. 819, 870, S. 779, 801, P. 625, R. 581.
News. § 17; M. and P. 66 n. (*t*) 160, 487 n. (*d*); Arn. 780.

TITLE VII.

Averages and Average Contribution.

CHAPTER I.

Average Losses.

642. Every extraordinary expenditure made on behalf of the vessel or the cargo, together or separately, and all damages which the vessel and cargo suffer, subsequent to the loading and departure of the ship and prior to its return and discharge are averages [*avarie*].

There are two descriptions of average, great or general average and simple or particular average. The expenses which are usually necessary on entering or leaving bays, rivers and narrow channels, and the expense of navigation dues and tolls, are not averages, but simple charges on the ship.

Failing special agreements between the parties, averages are regulated in accordance with the following provisions.

See Art. 619 (*ante*).

As to the meaning of the word "average" see note by Maclachlan to Pt. III., Ch. IV., of Arnould.

B. 99-101, F. 397-399, G. 700, 701, H. 696-698, P. 634, R. 391, S. 806, 807, 808, E. 235-237.

M. and P. 426 (*y*), 491 (*f*).

As to claims to abandon and action for averages being brought together see notes to Art. 632 (*ante*).

643. Extraordinary expenses incurred and losses voluntarily sustained for the benefit and preservation of the ship and cargo in common are general average.

Such are :—

(1.) Things given as composition [*composizione*] (to obtain the release) or under the name of ransom [*riscatto*] for the ship and cargo.

(2.) Articles jettisoned for the general safety.

(3.) Cables, masts, sails, and other fittings cut away for the safety of all, or which are carried away in consequence of what is done for the safety of all.

(4.) Anchors, chains, and other things abandoned for the safety of all.

(5.) Damage done by a jettison to goods remaining on board.

(6.) Damage done to the ship by the jettison either voluntarily or as a necessary consequence of it, damage which the ship receives in facilitating the salvage of the cargo or in facilitating draining off or getting out water, and the damages which the cargo sustains from the operation.

(7.) Damage done to a ship or cargo by steps taken to extinguish fire on board.

(8.) The expenses of the medical attendance and board of seamen wounded in the defence of the vessel, and their funeral expenses in case of death.

(9.) The wages and board of the members of the crew during an embargo or detention, when the vessel is put under embargo by a Government in the course of her voyage, or is compelled to waste her time [*trattenersi*] in port

in consequence of war breaking out, or for some other similar reason which hinders her from proceeding on her voyage to her port of destination, until the ship and cargo are freed from their mutual obligations.

(10.) The expenses of entering and leaving a port into which the vessel has been compelled to come by stress of weather, pursuit of enemies or pirates, an accidental leak, or by circumstances beyond control.

(11.) The wages and provisions of the crew in a port of distress during the repairs which are necessary for the prosecution of the voyage, when such repairs themselves constitute general average.

(12.) The expenses of unloading and reloading things which are landed to enable the above-mentioned repairs to the ship to be executed in a port of distress, the expenses of watching and the warehouse rent of such things as are warehoused.

See note to Art. 646 (6).

(13.) The expenses incurred to get a ship which is under arrest released or restored, if the arrest does not arise from something which relates to the ship or the private affairs of the captain, owner, or charterer exclusively, and the wages and provisions of the crew during the time necessarily occupied in getting such release or restoration if it is obtained.

(14.) The expenses of lightening a vessel when rendered necessary by bad weather or other reason relating to the joint safety of ship and cargo, and the dangers which the ship or cargo sustains in the operations of discharging and reloading.

(15.) Damages sustained by the ship and cargo by running voluntarily ashore [*investimento*], to save the ship in a gale or from capture or other imminent peril.

Voluntary stranding after collision is a general average act, C.C., Turin, 3 R.I.D.M. 372. In any case of voluntary stranding, the presumption is that it is general average, any allegation that it was caused by inherent vice of the ship or negligence must be strictly proved, C.A., Genoa, 26, 2, 86, Eco. Giur., 1886, 97. Salvage is always general average in spite of a clause in the Py., "free from average reciprocally," C.A., Ancona, 15 R.I.D.M. 247.

(16.) The expense incurred in getting a vessel afloat again when run aground, as mentioned in the preceding clause, and the salvage payable for labour and services rendered on such an occasion.

(17.) Losses and injuries sustained by goods put into lighters to lighten the vessel in the case pointed out in clause (14), including the sum paid to the said lighter, and reciprocally injuries sustained by goods remaining on board the vessel, in so far as such damages were themselves general average.

(18.) The premium and interest on a bottomry loan [*cambio marittimo*] given to cover disbursements which are reckoned as general average, and the premiums of insurance of the same disbursements, as well as the loss sustained in repaying the owner of goods sold in the course of the voyage in a port of distress to meet such disbursements.

(19.) The expenses of settling the general average. Damages which the ship sustains or disbursements made on account of her are not considered as general average, even if voluntarily incurred for the general benefit and preservation of all, if they arise from defects in or age of the ship or from any default or neglect of the captain or crew. Apparel [*attrezzi*] and furniture [*corredo*] of the vessel jettisoned, and anchors, chains and other things abandoned even voluntarily for the common welfare and preservation of all are not reckoned in apportioning general average, unless they are found properly entered in the ship's inventory kept in conformity with the provisions of Art. 500. A jettison of ship's stores is never reckoned as general average.

B. 102, 103, which distinguish expenses of a port of refuge according to whether the cause of putting in is itself general average or particular average on ship or cargo, F. 400, 403, G. 700, 706, H. 424, 699-701, Sc. 187, 188, 189, 191, 218, P. 635, R. 397, 399, 402-407, S. 811, 813, E. 238, 239.

Arn. 755-765; M. and P. 425, 428-433. *Attwood* v. *Sellar*, 5 Q.B.D. 286; *Svensden* [*Svendsen*] v. *Wallace*, 10 App. Cas. 404.

644. The following are considered as general average:—

(1.) The price or ransom of members of the crew sent on shore on the ship's duty and made prisoners or detained as hostages.

(2.) The expenses of an unusual quarantine not foreseen at the time of chartering, if it affects ship and cargo alike, including the wages and provisions of the crew during the quarantine.

F. 267-269, 272, G. 706, ransom is general average only if seamen employed on duty on behalf of ship and cargo, H. 699 (8), E. 238 (8).
Arn. 786. 793; M. and P. 431, 160.

645. If a jettison is necessary, it must as far as possible commence with goods least needed, most heavy, and least in value, then follow those on the first deck, then those on the next, and so on.

F. 411, H. 368, P. 508 (8), S. 815, Sc. 194, E. 246.
M. and P. 160.

646. All damages sustained by and all expenses incurred for the vessel alone or to cargo alone are particular average.

Such are :—

(1.) Any loss or injury suffered by goods shipped, through bad weather, fire, capture, shipwreck, stranding, breaking up, or other such like casualty, or from circumstances beyond control [*forza maggiore*].

(2.) Loss of masts, cables, anchors, sails and rigging, and any other injury which the vessel suffers from the causes mentioned in the preceding clause.

(3.) Any damage sustained through inherent defects in the ship or cargo.

(4.) The expenses of putting into any place, occasioned by defects in the vessel, by a leak resulting from her age, by shortness of provisions, or by any other cause which can be imputed to the owner, charterer, or captain.

(5.) The wages and provisions of the crew during the ordinary period of quarantine, or during repairs rendered needful by defects in or age of the vessel, or from any other cause which can be imputed to the owner, charterer, or captain, or during an arrest or a stay in harbour which concerns the ship alone, or the

cargo alone, or the expenses in such case of obtaining the release of one or the other.

(6.) Expenses incurred to preserve the goods shipped, or to repair casks, cases, or packages containing them, when such expenses are not the consequence of injuries reckoned as general average.

When cargo has to be landed, warehoused, and reloaded to enable repairs to be done to a ship, which are particular average on ship, the charges for landing, etc., are particular average on cargo, C.A., Genoa, 14, 4, 90, Temi G. 1890, 243.

They cannot be presumed to be particular average simply on the ground that the survey and report of seaworthiness were made when the ship was loaded and not when she was empty, see also Art. 77, M.M.C. (*post*), C.C., Rome, 13, 7, 83, Leggi 1884, 257.

When damage is sustained by cargo owners through the unseaworthiness of the ship at starting the shipowner loses his freight (Art. 571), and is liable to make good all losses sustained, C.A., Genoa, 14 R.I.D.M. 292. The expenses of getting a ship afloat when ashore, though the fault of a compulsory pilot, are particular average, C.C., Turin, 13 R.I.D.M. 819.

(7) The excess of freight in the case referred to in Art. 570.

Injuries sustained by goods shipped from accidents occasioned by the negligence of the captain, or any other member of the crew, are particular average on the owners of the said goods, saving their claim over against the captain, or on the ship and freight.

Damages which the owners sustain through an unnecessary and unreasonably long stay in port are made good by the captain.

B. 102, F. 403, G. 700, 707, H. 701, P. 635, 663, R. 394-396, 399, 408, S. 809, 820, 825, 840, Sc. 190, 218, E. 239.

Arn. 823; M. and P. 826.

Chapter II.

Average Contribution.

647. Particular averages are borne and paid by the owner of the article which has sustained the damage or occasioned the expenditure.

General average is apportioned proportionally amongst the goods and half the value of the ship and freight.

The values of goods which have been sacrificed are included in making up the total on which contribution must be made.

The clause "*Franco d'avaria reciproca*" in a charter-party has no meaning in a case of particular average, but frees shipowner and charterer mutually from contribution to general average. It has no effect on the relationship between a charterer and a bottomry bondholder, C.A., Naples, 28, 3, 85, D.C., 1885, 738.

A bottomry bond on ship and cargo binds all cargo notwithstanding a contract that it is "free of average," C.A., Genoa, 1 R.I.D.M. 60.

B. 104, 105, 107, 110, F. 401, 402, 417, G. 700, 701, 718, H. 698, 727-729, P. 637, R. 396, 398, S. 810, 812, 854 (7, 8), E. 237, 250, 251, Sc. 209.

Arn. 791, 804 *et seq.*, 824 *et seq.*; M. & P. 425, 426 (*y*), 434, 435.

648. The effects of the crew and passengers do not contribute to general average if they are saved, and have a right to be contributed for if jettisoned or damaged.

B. 106 includes ammunition and provisions, F. 419, G. 723, H. 731, P. 639, 640, S. 812, 811 (2), 856, E. 254, Sc. 203, 212 (3).

Arn. 792; M. & P. 434, 435.

649. Goods shipped for which there is no bill of lading [*polizza di carico*] nor receipt from the captain are not paid for if jettisoned, and contribute if saved.

B. 109, F. 420, G. 708, 723, H. 732, P. 640, S. 816, Sc. 190 (1), 203, E. 255, R. 409, 412.

Arn. 767, 802.

650. Things carried on the upper deck [*coperta*] of a ship always contribute to general average if they are saved.

When they are jettisoned or damaged by a jettison, except in the case of the voyages for which provision is made in the last clause of Art. 498, they confer no claim for the loss and damage except against a captain who has loaded them on deck without the consent in writing of the shipper. Otherwise there is a special contribution between the ship, the freight, and other goods loaded on deck with the consent of the shippers, without prejudice to the general contribution for general average of the whole cargo.

B. 109, F. 421, G. 708, 723. H. 733, P. 641, S. 812, 815, 855, Sc. 190 (2), E. 256, R. 411.

Arn. 796, 792; M. & P. 433, 434 (*h*). *Roy. Exch. Ship. Co.* v. *Dixon*, 12 App. Cas. 11.

651. If the jettison does not save the ship, there is no contribution. Goods saved in such a case are not liable to pay for the things jettisoned, nor for the repayment of damage suffered by other goods.

If the jettison does save the ship, and she is lost in the further prosecution of her voyage, goods saved contribute to the jettison on their value in the condition in which they are salved, less salvage expenses. Goods jettisoned do not, in any case, contribute in payment for damages which the goods saved sustain subsequent to the jettison.

The cargo does not contribute in payment for a ship which is lost or condemned as unseaworthy.

B. 111-113, F. 423-425, H. 734-736, P. 1849-1851, 1854, S. 856, E. 258, 259, 262.

Arn. 798-801; M. and P. 434.

652. Where goods put into lighters [*barche*] to lighten the ship are lost, the loss is apportioned between the ship and the whole of the cargo.

If the ship is lost with the remainder of the cargo, there is no claim for contribution against goods put into boats [*poste sugli scafi*] if the latter arrive in safety.

F. 427, G. 706 (2), H. 702-705, P. 643, R. 406-407, S. 817, E. 264.

Arn. 768.

653. If, subsequent to the apportionment, goods jettisoned are recovered by their owners, such persons must return to the captain and those interested what they have received out of the contribution, deducting the damages caused by the jettison and the expenses of recovering the goods.

B. 115, F. 429, G. 720, H. 739, P. 646, S. 863, 864, Sc. 215, E. 266.

Arn. 802.

654. The ship contributes on its value at the place of discharge, or on the price for which it is sold, less particular averages subsequent to the general average.

Freight which, in consequence of the agreement noticed in Art. 577, is gained even when the goods shipped are lost, is not subject to contribution.

See Art. 647 (*ante*), *i.e.*, its value is ascertained by this article, and it contributes on half of that value.

B. 110, 105, F. 417, G. 717, H. 727, R. 416, E. 251, S. 854 (7, 8), Sc. 204, 207.

Arn. 806, 808, 811; M. and P. 435.

655. Goods salved, and those jettisoned or otherwise sacrificed, contribute on their net [*netto*] value at the place of dis-

charge. If there is such an agreement as is mentioned in the preceding article, the freight is not deducted from the value.

B. 107, F. 402, G. 718, 719, H. 727-729, R. 416, E. 250, 251, S. 854 (5), Sc. 200, 208.

Arn. 809-811; M. and P. 435.

656. The nature, species, and quality of goods which must contribute, and of those which are jettisoned or sacrificed, are proved by producing the bills of lading and invoices [*fatture*], and, failing these, by any other means of proof.

When the bills of lading [*polizze di caraco*] allege a quality or value of goods loaded which is less than the true one, they contribute on their actual value, if saved, and are paid for on the basis of the quality or value shown, if they are jettisoned or damaged.

If, on the other hand, a quantity or value higher than the true one is alleged, the goods shipped contribute on the basis of the quality or the value shown, if they are saved, and are paid for according to their actual value, if they are jettisoned or damaged.

B. 108, F. 415, 418, G. 719, H. 729, 730, P. 648, 649, R. 416, E. 250, 253, S. 845 (5).

Arn. 802.

657. The captain must, as soon as possible, draw up a formal statement [*processo verbale*] of every decision arrived at and operation executed for the general safety.

The statement must show the reasons for the decision, and point out shortly the things sacrificed or damaged. It must be signed by the principal members of the crew, or be accompanied by the reasons for their refusing to sign, and must be copied in the log book [*giornale nautico*].

A copy of this statement, signed by the captain, must be appended to the deposition mentioned in Art. 516.

See Art. 500 (*ante*).

B. 116, F. 412, G. 522-524, H. 368, P. 1388, S. 813, 814, E. 247.

M. and P. 427.

658. The adjustment, estimate, and apportionment of losses and damages is made up at the place of the vessel's discharge, at the captain's instigation, by experts named, if within the realm, by the president of the Tribunal of Commerce, or, failing him, by the prætor, and in foreign countries by the con-

sular officer or his deputy, and, failing him, by the local authority [*autorità locale*]. The apportionment, when made out by experts, is subject to examination, if within the realm, by the Tribunal of Commerce, and if in foreign parts by the consular officer or his deputy, or by the local authority.

(As to surveys, see Arts. 71, 402, note to Art. 554, *ante*.) The surveyors must report on oath. The *Lorenzo*, C. A. Genoa, 9 R.I.D.M. 290. An agreement by all parties to let one adjuster decide on his knowledge and conscience is not a compromise, C.A., Venice, 3, 11, 88, Temi V., 1888, 609.

For a voluntary settlement of average the consent of all parties is needed, and the conditions of their consent must be complied with. Art. 364 is not applicable to such a case, C.A., Genoa, 23, 2, 97, 13 R.I.D.M. 208.

In the case in question certain parties agreed to submit to the decision of a certain average adjuster, others agreed provided another adjuster named by them concurred in the adjustment, the latter, however, was of opinion that the case was not one of general average at all, and declined to proceed. The Court held that there was no binding agreement as the adjusters were judges of law as well as fact, and that therefore though the figures might not be disputed the principle was, and that therefore the adjustment was not binding, Art. 364 only referring to a case of figures, *ibid.*; see also C.A., Genoa, 4, 5, 97, 13 R.I.D.M. 223.

An adjustment of general average is a condition precedent to an action to ascertain amount due by insurer of ship, even when ship and cargo belong to the same owner, C.A., Genoa, 21, 6, 87, Eco. Giur., 1887, 193.

B. 118, F. 414, G. 728, 729, H. 711, 722-725, P. 650, 652, Sc. 213, 214, E. 249.

Arn. 811, 812; M. and P. 436.

659. No legal claim for average can be brought against the shipper or against the consignee, if the captain has received the freight and delivered the goods which were shipped without protesting [*protesta*], even when the freight was paid in advance.

B. 232, F. 435, G. 731, H. 488, P. 653, S. 964, E. 274.

Arn. 814; M. and P. 437.

TITLE VIII.

Damages Caused by Collisions between Ships.

Italian law of abandonment to creditors and the Italian version of the International Rules for Preventing Collision, applies to a collision between foreign ships in Italian waters, C.C., Florence, 17 J.D.I.P. 963, and a foreign owner can be cited before an Italian tribunal in such case, 11

R.I.D.M. 488, but accidents arising from contact between ships at anchor and their anchor gear, etc., are governed by the Common Law, C.A., Genoa, 11 R.I.D.M. 377.

Consult *L'Urto di Navi in Mare*, *Buzzati*, Padua and Verona, 1889.

660. If a collision [*urto*] between ships is the result of accident or uncontrollable circumstances [*forza maggiore*], the damages and losses consequent upon it are borne by the things which have suffered them, without any claim to repayment.

B. 228, F. 407, G. 735, H. 536, 540, P. 664, 669, R. 450, 462, S. 830, E. 242 (1), Sc. 221.

M. and P. 631; Macl. 286.

661. If a collision is the result of a fault on board one of the ships, the damages and losses consequent upon it are chargeable to the said ship. The compensation payable to persons who are killed or wounded have priority, if the sum to be distributed (*i.e.*, generally the value of the ship and freight, see Art. 491, *ante*) is insufficient.

Collision damage in Italian law covers loss incurred by delay during repairs, C.A., Genoa, Eco. Giur., 1888, 193, and for pain and suffering, Trib. Civ., Naples, 15 R.I.D.M. 524. If a ship is insured and also bottomried, and is lost by reason of a collision, money paid by the other ship as damages are divided *pro ratâ* between bondholder and insurer. C.C., Turin, 31, 12, 87, D.C. 1888, 215.

This priority is retained as against other Italians in claims against a foreign ship, although not recognised by the law of her flag, C.A., Genoa, 10 R.I.D.M. 652.

B. 228, F. 407, G. 734, H. 534, P. 665, R. 451, 452, S. 826, 838, E. 242 (2), Sc. 8, 220, 222.

M. and P. 631; Macl. 286, see also M.M.C., Art. 112 (*post*).

(*a.*) There is no express provision with regard to loss of life or personal injury, nor indeed with regard to cargo, either in the former Italian Code or in any of the earlier Commercial Codes, but the new Belgian Code, Art. 231, and the new Portuguese Code, Art. 673 (1), implicitly, and the new Spanish Code, Arts. 834, 838, directly, recognise such rights; there is, however, no doubt that such rights exist, as being claims for a *quasi delict* as to which the Civil Codes contain provisions, but apparently they have no priority, except in Italy and Spain, and extend only as a general rule like other claims, to the value of the ship and freight, in States where an owner can free himself from liability for the acts of his captain by abandoning the ship and freight to the creditors. It appears that in France a claim can be brought against the owners of both ships jointly, when the Court will apportion the damage between them if both are to blame, and such that a claim, if by relatives for damages sustained by

loss of life, should be in the Civil Tribunal as not being a commercial affair, but if for injury should be in the Commercial Tribunal (*Simon Ullander* c. *Louvel*, J.D.I.P., 1875, p. 112), and this would probably be the law elsewhere in the absence of special provision, and certainly was so in Italy under the former Code (see Arts. 91, 725 of former Code); but under this new Code, the Commercial Tribunal, or rather (see Law of 1888 *post*) the Civil Tribunal on its Commercial side, would appear in all cases to be the proper one (see Arts. 54, 870). In England, the Court of Admiralty could not exercise jurisdiction *in rem* in cases of loss of life (the *Vera Cruz*, 10 App. Cas. 59), as such claims did not exist at Common Law, and were only created by Lord Campbell's Act (9 & 10 Vict., c. 93 preamble), but could and did exercise jurisdiction in cases of personal injury (the *Ruckers*, 4 C. Rob. 73). The Common Law Courts, since Lord Campbell's Act, have exercised jurisdiction for claims for loss of life at sea in collisions or otherwise, though, as far as the present writer is aware, it has never been directly decided whether that Act applies to cases arising on the high seas or in foreign waters. The Act itself does not apply to Scotland (§ 6), and therefore not to Scotch territorial waters, and presumably not to Scotch ships, if any distinction can be drawn amongst British vessels, neither does it apply to the territorial waters of a British Colony which was self-governing at the time of the passing of the Act; though, no doubt, most, if not all such, have similar local statutes, and it seems difficult to understand how an Act so limited can apply to foreign territorial waters or even on the high seas, in the case, at all events, where either the plaintiff or the defendant is a foreigner, a Scotchman, or even a British Colonist. In Scotland, damages can in many cases be recovered by the survivor for the loss of life of a relative, though by no means on the lines of Lord Campbell's Act (see *Goodman* v. *L. & N. W. R. Co.*, 14 S.L.R. 449; *Renton* v. *N. B. R. Co.*, 6 S.L.R. 255; *Eister* v. *N. B. R. Co.*, 8 M. 980, 42 J. 575; *Thompson* v. *N. B. R. Co.*, 4 R. 115), under the Common Law of Scotland. And it therefore may be that the Court of Admiralty, always practising the Civil Law, except when, that law being different from the Common Law of the realm, it was prohibited from adjudicating cases in accordance with it, may always have recognised a right, similar to that recognised in Scotland and other countries where the Civil Law was in force, but could not enforce it whilst liable to prohibition, but that now, both for the reason that such a right is not inconsistent with Lord Campbell's Act, and also because as a Division of the High Court of Justice it cannot be prohibited, such a claim might be entertained by it in proceedings *in rem* or *in personam*, and whether the claim arose on the high seas or elsewhere.

(*b.*) It is sufficient for relatives of deceased passengers to show that they are the personal representatives; they need not prove their claim to be supported to entitle them to institute proceedings (2, 7, 97, C.A., Naples, 13 R.I.D.M. 434), nor that they have succeeded to property, 5, 6, 99, Trib. Civ., Naples, 15 R.I.D.M. 524.

In the case of cargo, it is clear from this and the following article that

the wrong-doing ship is liable in Italy, as indeed in all States, to make good damage done to cargo on board either vessel, in the absence, so far as its own cargo is concerned, of special provisions in the charter-party and bill of lading.

662. If it cannot be decided which of the colliding ships is to blame, or if both are to blame, each bears the loss and damage it has suffered without any claim to repayment; but each is liable for the whole damage and loss occasioned to the goods shipped, and for compensation payable for personal injuries, in accordance with the provisions of the preceding article.

B. 229. Silent as to case of doubt, if both to blame damages divided in ratio of fault. F. 407. Damages equally divided in case of doubt; the Code is silent as to case of both to blame, but the Courts have decided frequently in accordance with the law as now laid down in Belgium. G. 735. Silent as to case of doubt in discretion of Court where both to blame. H. 535, 538. In case of doubt the whole damage apportioned between each ship and cargo, in proportion to value; where both to blame, each bears his own loss with a claim over against the masters. P. 666, 668, as in Belgium, where both to blame, in case of doubt as here. R. 463. Silent as to case of doubt: where both to blame each bears his own loss, and compensates the cargo. S. 827, 828. Each ship owner bears his own loss, and compensates the cargo owner. Sc. 221. In case of doubt the damage rests where it falls; if both to blame the damages in discretion of the Court. E. 242 (3). In both cases the whole damage is apportioned between the two ships in the ratio of their respective values.

M. and P. 631, 632; Macl. 287-289.

(*a.*) In the former Italian Code there was no express provision for the case of "both to blame," but, as the Code was practically identical with that of France, it is probable that in such a case the Courts would, as in France, have apportioned the damages between the ships in the same ratio as the culpability. In the other case mentioned in the article, *i.e.*, where there is "doubt" as to the cause of collision, the law formerly was that the joint damages were equally divided between the two ships (see Art. 516 of the former Code). It is somewhat remarkable that since 1875, when the Common Law of England in cases of collision between ships was altered by the Judicature Act (36 & 37 Vict., c. 66), § 25 (9), so as to bring it into accord with the law as administered in the Admiralty Court, on the erroneous supposition that that was the general maritime law of the world as administered in all civilised States, that now, in all English Courts, when both vessels are to blame, each pays half the loss of the other, Italy and Spain should have altered their law in the opposite sense, so as to make it coincide with the old English Common Law. At present the law where both are to blame is as follows: In England and the Admiralty Courts of the United

States each pays half the other's damage. In the Common Law Courts of the United States (*Arctic Fire Ins.* v. *Austin*, 25 Amer. Rep. 221), and in Italy, Holland, Portugal, Russia, Denmark, Spain, and sometimes in Sweden, each bears its own loss, *i.e.*, these countries are in accordance with what was the Common Law of England prior to the Judicature Act, so far as the ships themselves are concerned, but in Italy, under this article, 11 R.I.D.M., 490, and in France, 8 R.I.D.M., 258, each is liable for the whole loss of cargo unless protected as to its own cargo by bill of lading. In Belgium, France, Norway, and generally in Sweden and Germany, the joint damage is apportioned in proportion to the culpability of each, whilst in Egypt each vessel pays in proportion to its value. So that the method adopted by England and the United States Admiralty Courts, far from being that common to the civilised world, is the only instance of such a practice. In the case of doubt, that is, where there is not evidence to satisfy the Court as to where the blame lies, in England (see the *Catherine of Dover*, 2 Hagg., p. 154), in the Common Law Courts of the United States, and in Italy, Germany, Spain, Norway, Sweden, and Denmark, each bears its own loss, whilst in the Admiralty Court of the United States (the *Nautilus*, Ware, 2nd ed., 529), and in France (407), each pays half the total loss; in Holland (538), and Egypt (242 (3)), each ship and cargo pays in proportion to its value, whilst Belgium, Russia and Norway have no special provision on the subject; but as without a special provision it is impossible to conceive that a person should be held liable in damages to another unless proved to be in fault, it is most probably the case that in these States the law is similar to that of England and the countries first mentioned.

It should also be noted that both the Italian and the Belgian law on these points has diverged from the French Code of Commerce. The former Codes of Belgium and Italy were identical with that of France, now each differs from the others.

(*b.*) Where both vessels are to blame there is a notable difference in English law between the position of a cargo owner, on the one hand, and of an injured passenger, or the relatives of one who has been killed, on the other; the cargo can recover half its loss from the other ship, its rights against its own ship being determined by the bill of lading, but with the result that the exception of "dangers and accidents of navigation" (see note to Art. 661), would not remove the carrier's liability for a collision contributed to by his own servants' negligence, any more than that of "collision" alone would (see Brett., L.J., in *Chartered Merc. Bk. of India*, etc., v. *Netherlands Indian Steam Navigation Co.*, 10 Q.B.D., at p. 531); whilst a passenger or an innocent member of the crew can recover his whole claim from the other ship (*Mills* v. *Armstrong*, 13 App. Cas. 1), and the passenger's rights as regards his own ship are governed by the contract he has made. In France, as contributory negligence is no defence to an action, but only goes in mitigation of damages (*Recuillet* v. *Chemin de Fer du Nord*, D.L., 1885, 1, 433), it would appear that where

both vessels are to blame even the officer who gave the wrong order or seaman who executed it could recover something from the other vessel, and a passenger or innocent member of the crew from either or both (*Simon Ullander* c. *Louvel*, J.D.I.P., 1875, p. 112), and from this arises the practice of each vessel paying towards the total loss in proportion to the blame, which is now adopted in France (D.L., 1873, 3, 57, D.L., 1873, 1, 341, Mit. Mar. Reg., 1880, p. 1459), and made the actual law in Belgium, though for some time after the enactment of the Commercial Code a view was held in accordance with the doctrine of our Common Law of contributory negligence (See Pardessus, *Cours de Dr. Comm.*, par Tarlier, vol. i., pt. iv., tit. ii., ch. ii., sec. iv.). It appears, however, that so far as the carrying ship is concerned, her owners may contract themselves out of the liability by suitable expressions in the bills of lading (the *Camden*, 4 R.I.D.M. 129). But the cargo having a claim *in solido* against either vessel (*Charles Quint* and *Ville de Brest*, 8 R.I.D.M. 258; 6 R.I.D.M. 35) can, when there is such a clause, get her whole damage from the other ship (the *Durley* and *Sirius*, 4 R.I.D.M. 259). Even under the former vague Italian law the master was liable to his own owners for damage sustained by them when both vessels were to blame (J.D.I.P., 1885, p. 457). In England, in case of doubt as to the cause of collision, the rights of the cargo owner and passenger against the carrying ship would depend on the bill of lading or passenger ticket, and the remarks made above relative to the case of "both to blame" would be applicable, as the onus is on the carrier to bring himself within the exceptions in the contract, save that the exception "collision" might be held to shift the onus of proof on to the plaintiffs, to show negligence on the carrier's part; whilst against the other ship they could recover nothing in tort if they failed to prove negligence against her. The only difficulty which could arise would be if the "doubt" was not (1) as to which of the ships was wholly to blame, or (2) as to whether the collision was not unavoidable, but (3) as to whether the other ship was wholly or only in part to blame for it. But this is now cleared up by the decision of the House of Lords in the *Bernina*, *Mills* v. *Armstrong*, 13 App. Cas. 1.

This article applies to a foreign ship when the collision is on the high seas (C.A., Genoa, 10 R.I.D.M. 652).

The persons actually in fault have no claim for damages, but the subordinates who carried out orders or received none have (C.A., Genoa, 10 R.I.D.M. 652), and also innocent cargo owners, 23 J.D.I.P., 907.

663. The liability of the ships as laid down in the preceding articles leaves that of the actual wrong-doers to those who are damaged and to the owners of the ships intact.

B. 230, 12, 21, F. 216, 221, 230, G. 734, H. 534, 535, 349, 321, the wrong-doer is primarily liable personally, but there is a claim *in rem* against the ship for six months after the person injured knows of the facts, P. 671, 672, S. 829, E. 242, 30, 35, 89. In the case where the actual wrong-

doer is a pilot, see note to Mercantile Marine Code, Art. 66 and 201 (*post*), and the liability is joint and several. 15 R.I.D.M. 524.

M. and P. 614.

664. When one vessel has collided with another innocently [*senza colpa*], in consequence of a former collision for which a third vessel is in fault, the whole liability is on the third vessel.

G. 739, P. 667, S. 831.

M. and P. 624; the *Thames*, 44 L.J. (Acl.) 23; the *Industry*, L.R. 3, A. and E. 303; the *Sisters*, 1 P.D. 117.

665. The action for damages [*azione di risarcimento*] by collision of ships is barred, if no claim is made within three days before the authority of the place where it happened or where the vessel first touches.

As to damages caused to people or goods, a default in making a claim does not prejudice those interested, when they are not on board the ship, or are so situated as to be unable to act.

B. 232, 233, F. [1891] 436, H. 742, P. 673, E. 274; 275, S. 953.

The exception covers passengers, who also can claim if injured against both ships jointly without proving a specific act of negligence against either, C.C., Turin, 13, 1, 93, 24 J.D.I.P., 195.

The proper Italian tribunal to entertain a cause of collision, even when both vessels are foreign, and of different nationalities, and the collision takes place on the high seas, is that of the port into which the injured vessel puts, or if she sinks, then that at which her crew are landed, J.D.I.P., 1885, p. 419, Ann. de la Jur. It., III. 2, 320, IV. 1, 356. But if several tribunals are competent to have cognisance of a cause, the fact that proceedings are pending in one is no bar to proceedings being taken in another, C.C., Turin, 6 R.I.D.M. 487. Italian territorial waters outside a port are a part of the public domain, and not of the adjoining district or port, C.C., Naples, 24 J.D.I.P., 1076, whether territorial waters are to be understood as three miles off the coast or to the range of cannon is doubtful, 14 R.I.D.M. 560, 15 R.I.D.M. 524; see M.M.C., Art. 435. A claim in legal proceedings satisfies this section without a protest, C.A., Genoa, 11 R.I.D.M. 377; see Art. 518 (*n*); see also C.A., Genoa, 11, 4, 87, D.C., 1887, 520), as also if made in the report, Art. 516, 517, C.A., Messina, 13 R.I.D.M. 823. A protest is not necessary in case of total loss, 15 R.I.D.M. 524.

If criminal proceedings are instituted against either commander, the civil action is stayed till the criminal case is decided, but the vessels may be arrested and kept under arrest pending the decision, Trib. Civ., Genoa, 27, 12, 98, 15 R.I.D.M., 246.

TITLE IX.

Privileged Debts [Crediti Privilegiati].

CHAPTER I.

General Provisions.

Art. 666. The privileges [*privilegi*] set out under this title have priority over any other privilege, whether general or special, on chattels [*mobili*] under the Civil Code.

General and special privileges are specified in bk. iii., tit. xxiii., ch. i., sec. 1, Arts. 1,948-1,960, of the Civil Code (*post*). The privilege or lien does not, however, extend to insurance money, C.A., Genoa, 7, 3, 84, Eco. Giur., viii., 89, 31, 12, 89, Temi G., 1890, 137, C.C., Turin, 29, 12, 83, Giur., 1884, 234, 7, 2, 85, Giur., 1885, 144.

G. 755, 756, Sc. 267, P. 574.

667. Where the article on which there is a privileged debt has deteriorated or diminished in value, the privilege can be put in force against the residue or what is recovered and preserved.

B. 165, F. 327, H. 588, P. 575.

668. If a creditor has a privileged claim against one or more articles, and another creditor, whose privilege extends to other articles, has a claim ranking higher than his, the former is deemed to be installed [*surrogato*] in the same privilege as belongs to the latter creditor.

Other privileged creditors who would be prejudiced (sustain a loss) in consequence of this substitution [*surrogazione*] have the same right.

This article is so difficult to understand that the actual Italian text is appended. The translation given has been approved by that eminent, but now, unfortunately, deceased, writer both in English and Italian, Mr. Gallenga, formerly *Times* correspondent.

Il creditore avente privilegio sopra una o più cose, qualora sul prezzo di esse sia vinto da un creditore il cui privilegio si estende ad altri oggetti, s'intende surrogato nel privilegio a questo spettante.

Eguale diritto hanno ancora gli altri creditori privilegiati che rimangono perdenti in seguito alla detta surrogazione.

The difficulty is whether the two debts, for the purpose of this article, must be of the same class, so far as the object upon which both have a privilege are concerned, or whether it applies where the one having the

wider privilege is also, so far as the object in which both have a privilege, of a higher class. It is also to be observed that the next article makes arrangement for the priority *inter sese* of privileged debts of the same class.

For example, if it applies to privileges of different classes, a salvage service to ship, freight and cargo ranks as against cargo (No. 3), see Art. 671; as against freight and ship (No. 2), see Arts. 673, 675, and is always of a higher class than seamen's wages, which rank as against ship (No. 7), see Art. 675, and as against freight (No. 3), Art. 673; if, therefore, such a salvage service is rendered, the seamen would be able to look beyond the ship and freight, and have their privilege extended also to the cargo.

If it only applies to privileges of the same class, its principal effect would be in case of bottomry bonds, which rank as to cargo (No. 8, Art. 671), as to freight (No. 6, Art. 673), as to ship (No. 9, Art. 675); where there were several given in the same port, it would make no practical difference if one was on ship alone, one on ship and freight, and one on ship, freight, and cargo, as, in each case, on the claim of the person holding the more ample security being proved, those holding the more limited one would be subrogated to his larger one. If, again, the qualification of the next article is introduced, the effect would be that a prior bottomry bond on ship alone would have its security extended to cargo and freight by the fact of a subsequent bond being given which covered those articles as well as the ship.

In a French translation of the Code, by M. Bohl, the difficult passage is thus rendered: "Si le créancier, ayant privilège sur un ou plusieurs objets, *est dépassé sur leur prix* par un créancier dont le privilège s'étend à d'autres objets, *il est censé subrogé dans le privilège* appartenant à ce dernier. Le même droit ont aussi les autres créanciers privilégiés, qui restent en perte à la suite de la dite subrogation." The translator then observes, "that the (doctrine of) civil subrogation is in this instance applied in an excellent way. This article will afford great facilities for procuring money required for a ship. One may recommend this Italian example to all legislators." It will be seen that neither the translation of the article itself, nor the note, touches what appears to be the real difficulty, and it is to be hoped that if the article is adopted by other nations it will be rather more clearly expressed. There is at present no corresponding article in any of the other Codes, and the Civil Code of France (C.C., Art. 1250 *et seq.*) and Belgium is more analogous to the provisions of the English Mercantile Law Amendment Act, 1856 (19 and 20 Vict., c. 97), § 5, that a debtor jointly liable with others to pay a debt is, if he pays it, entitled to be put into the position of the original creditor as regards his co-debtors.

In England, the practice in the Admiralty Registry, when the proceeds are insufficient to satisfy all claims, is to "marshal the assets," as it is called, though it would appear that to marshal the claims would be a more correct statement; and the law is thus laid down in Mr. McLachlan's

Merchant Shipping, 2nd ed., p. 656: "The court . . . will marshal such assets as are within its control in that way which best meets the just claims of competing plaintiffs, and best protects the interests of separate defendants. If there be two funds in court, and one of them is subject to the lien of one suitor, and the lien of another suitor covers both, payment of the latter will be directed first out of the fund that is subject only to his own lien, in order that the residue of the fund subject to both liens may be greater for him who has no alternative." It should be added, however, that this is only as between claims of the same rank (see Roscoe's *Admiralty Practice*, 2nd ed., p. 101), and is similar to the right of "marshalling securities," between rival creditors (see *Aldrich.* v. *Cooper*, 8 Ves., 382), where if one creditor has two funds out of which he can recover, and another only one, the former is bound to exhaust the fund on which he alone has a claim before claiming against the other; and if he fails to do so, the creditor who has but the one fund is subrogated to him in his claim against the other fund *pro tanto;* but in this case both funds emanated originally from the same source, *i.e.*, a common debt, not, as in the case of ships and cargoes, from probably different persons.

669. Privileged debts of the same order share in proportion to their respective amounts [*ammontare*] if the fund is insufficient for all, when they are created at the same port. But if, when the vessel has resumed her voyage, debts of a similar description are subsequently created, the later debts have priority over the earlier ones.

The expenses incurred by a creditor in bringing in his claim and interest, if payable, for the year last past and for the current year up to date of the arrest, attachment, or voluntary sale of the vessel, stand on the same footing as the capital sum of the debt itself.

B. 4, F. 191, 323, G. 768, 769, H. 313, 314, P. 576, S. 581, Sc. 281, E. 5. Macl. ch. xv.; M. and P., 125, 242, 575, 619 (notes t. 10) 653; News. § 87.

This apparently only covers preliminary costs not the court fees which are only on the lower basis of unsecured debts, C.C., Turin, 23, 12, 86, Giur. 1886, 674.

It is necessary to give the privilege that the vouchers should be inscribed in the Departmental Registry, C.A., Venice, 19, 5, 38, Temi V., 1885, 302. The creditors have a right to freight earned between a former sale which has been set aside and that which is operative, C.A., Venice, 19, 5, 85, Temi V., 1885, 302, C. de C., Florence, 11, 1, 86, Ann. 1886, 65.

670. If the document of title [*titolo*] to a privileged debt is "to order," its endorsement [*girata*] transfers the privilege.

This article would, as a rule, only apply to bottomry bonds or mortgages, there being an obvious improbability about the title to any of the other debts being "to order," though they might be assigned.

Cf. B. 162, F. 313, G. 684, 769, H. 573, P. 577, E. 154, Sc. 270.

M. and P. 242 (note t.), 573; Macl. 56.

Chapter II.

Debts which are Privileged on the Cargo.

Other Codes do not generally contain a list of debts privileged on cargo, but the claims under heads (4) and (6) are in most cases specially provided for (see notes to Codes, below); (5) is an ordinary possessory lien, and (3) also, exercised by the Government; (2), (8) and (9) are, however, new to most Continental laws, and are most important adaptations from that of England as to salvage and bottomry.

671. The following debts are privileged on the cargo [*cose caricate*] laden on board a ship, the total amount of each class having priority in the order here stated:—

(1.) Law costs [*spese di giustizia*] incurred on behalf of all creditors in common, in respect of things done to preserve and enforce their claims.

(2.) The expenses, compensation and charges for salvage [*salvataggio*] incurred during the last voyage, in accordance with the provisions of the Mercantile Marine Code.

See M.M.C., 121, 126, 133, (*post*).

(3.) Custom House duties on the goods at the place of discharge [*scaricamento*].

(4.) The expenses of carriage (freight) and of discharging.

Is limited strictly to freight properly so called and does not include dead freight, demurrage or other charges against shipper (C.A., Genoa, 15, 7, 96, 12 R.I.D.M. 228, 602, 4 R.I.D.M. 97) unless specially agreed in the contract of affreightment, C.A., Genoa, 25, 11, 95, 11 R.I.D.M. 659.

(5.) Rent for the warehouse in which the goods are put on their discharge.

(6.) The amount payable for general average contributions.

(7.) Premiums of insurance.

(8.) The amount of capital and interest payable in respect of liabilities contracted by the captain on the cargo,

in the case provided for in Art. 509, and with the prescribed formalities.

(9.) Any other loan on bottomry, or on a pledge of cargo when a person who has made the loan is in possession of the bill of lading.

B. 71, 80, 114, F. 280, 428, H. 474, 487-490, 547, 548, 566, 584, P. 580, S. 665, Sc. 216, 276, E. 98, 265.

M. and P. 86, 389-394, 437; Macl. 99, 404, 475-480, 523, 593.

672. The privileges enumerated in the last article are lost, if no proceedings are taken within a fortnight of the discharge or before the cargo has passed into the hands of a third party.

The ordinary rules established by the Code of Civil Procedure are applicable to the attachment [*sequestro*] arrest [*pignoramento*] and judicial sale [*vendita giudiziale*] of things affected by a privileged debt.

In the particular cases of (4), (5) and (6) there is a similar provision in most of the Codes.

The privilege on cargo does not extend to a claim for demurrage, the *Armathwaite*, 4 R.I.D.M. 97.

Cf. B. 80, 81, F. 307, freight only, H. 490, twenty days, P. 581, S. 667, twenty days, Sc. 277, E. 126, 127.

CHAPTER III.

Debts which are Privileged on Freight.

The other Codes contain no special list of privileged debts on freight, but, as a rule, the owner is liable on the master's contracts, and for his *quasi-delicts*, and frees himself from this liability by abandoning the ship and freight. Many of the Codes, however, give seamen a special privilege on freight for their wages.

673. The following debts are privileged on the freight [*nolo*], and rank against its amount in the order stated below :—

(1.) Law costs incurred in the common interest of all the creditors in preserving and enforcing their claims.

(2.) The expenses, compensation, and charges for salvage due for services rendered during the last voyage, in conformity with the provisions of the Mercantile Marine Code.

See Note to art. 671.

(3.) Wages, perquisites [*emolumenti*], and compensations due, in conformity with the provisions of title iii.

of this book, to the captain and other members of the crew, for the voyage in respect of which the freight is earned, as well as repayments due to the Mercantile Marine Sick Fund [*cassà degli invalidi della Marina Mercantile*] in respect of the same voyage.

(4.) Contributions payable to general average.

(5.) Insurance premiums.

(6.) Capital and interest due on bottomry bonds or freight entered into by the captain in the case provided for by Act 509, and with the formalities prescribed.

(7.) Compensation to shippers for short delivery [*mancanza di consegna*] of cargo, or for damage to cargo which has been sustained through the default of the captain or crew during the last voyage.

(8.) Any other debt, secured by bottomry or by a pledge [*pegno*] of the freight, copied and noted on the ship's register.

Cf. B. 7, 63, 71, F. 216, 271, G. 756, 757, H. 321, 451, 452, 574, 578, P. 582, Sc. 268, 269, E. 30, 74, 89, 98, 158 diff. In English law a maritime lien on ship usually includes freight, but the lien on the latter is more easily lost than on the former by *laches* in arresting it.

(4), (7) Give no right to retain the freight, but in cases where under Art. 400 there is a presumption that the commander is liable for damage to cargo it may be placed on deposit until the matter is settled, 9 R.I.D.M. 79. (3) Does not include costs, C.C., Turin, 23, 9, 86, Giur., 1886, 674.

Chapter IV.

Debts which are Privileged on the Ship.

It is to be noted that "damage by collision" gives no privilege in Italy; indeed, Belgium, Norway and Sweden, and Denmark, are the only Continental States in which it does confer a privilege, and even in these it comes very low.

674. Ships and shares [*porzioni*] in ships are bound, even when in the possession of a third party, for the payment of debts which the law declares privileged, in the measure and within the limits stated below.

B. 3, F. 190, 196, G. 755, H. 312, S. 599-602, E. 4.

675. The following debts are privileged upon the ship ranking against its value in the order stated below :—

(1.) Law costs incurred in the common interest of all creditors in preserving and enforcing these claims against the ship.

The expenses of sale must be borne by the person causing the sale, they cannot be added to the purchase money, C. A. Genoa, 10 R.I.D.M. 357.

(2.) Expenses, compensations and charges due for salvage services rendered during the last voyage, in conformity with the provisions of the Mercantile Marine Code.

Salvage occupies a much more advantageous place in this Code than in any other, except that of Spain, S. 842, it being generally relegated to a place which would be represented here between Nos. 6 and 7, though, as to amount, the Italian law is much less liberal than the practice in England and elsewhere, never, even in the case of derelict recovered out of sight of land, exceeding one-eighth of the value, see M.M.C., Art. 134, *post*.

(3.) The navigation dues sanctioned by law.

(4.) Pilotage, watchmen's wages and expenses of watching the ship subsequent to its arrival in port.

Does not include expenses of a watchman in a lighter (see M.M.C., Art. 171, note, C.A., Genoa, 10 R.I.D.M. 357), nor the expenses of moving a ship under an order of court. C.A., Genoa, 14, 9, 86, Eco. Giur., 1886, 328.

(5.) Rent for warehouses in which the ship's apparel and furniture are stored.

(6). The expenses of keeping up the ship and its apparel [*attrezzi*] and furniture [*arredi*] subsequent to its last voyage and arrival in port.

The claimant must prove that the ship has not made an intermediate voyage, C.A., Genoa, 9, 12, 87, Eco. Giur., 1888, 27.

(7). Wages, perquisites and compensation due, in accordance with the provisions of title iii. of this book, to the captain and any other member of the crew for the last voyage, as well as repayments due to the Mercantile Marine Sick Fund in respect of the last voyage.

(8.) Contributions payable to general average.

(9.) Capital and interest due on bottomry bonds entered into by the captain for necessaries for the ship in the case provided for by Art. 509, and with the prescribed formalities.

This privilege is lost if the deposition, Art. 508, is not made, C.A., Genoa, 9 R.I.D.M. 73.

Repairs to a lighter give no privilege against the proceeds, C.A., Genoa, 10 R.I.D.M. 357.

(10.) Premiums of insurance on ships and appurtenances [*accessorii*] for the last voyage, if the vessel is insured for the voyage, or by a time policy [*a tempo*] and for steamships performing a regular periodical service and insured by time policies, the premiums corresponding to the last six months, and besides in mutual assurance associations, apportionments and contributions for the last six months.

The "last six months" are six months prior to the arrival of the ship at the place where she is sold, C.C., Florence, 11, 1, 86, Ann., 1886, 69, C.A., Genoa, 13, 5, 90, D.C. 90, 857.

(11.) Compensation due to shippers [*noleggiatori*] for short delivery of cargo, or for damage to cargo sustained through the default of the captain or crew during the last voyage.

(12.) Unpaid purchase money of the ship due to the vendor.

(13.) The debts classified under Clause 9 [*suprà*], when not copied and noted (on the ship's register) with diligence, and any other bond on bottomry [*cambio marittimo*] of the ship, and debts in respect of which the ship is pledged.

(7), (10), (11) The expression "last voyage" (*ultimo viaggio*) must be interpreted according to surrounding circumstances, the intention of the owners, charter-party, ship's articles, etc., C.A., Genoa, 18, 12, 86, Eco. Giur., 369. But in the case of seamen's wages means the whole round voyage for which they ship, C.A., Genoa, 12, 3, 86, D.C. 86, 912. It is a question of fact to be decided by court of first instance, C.C., Turin, 23, 9, 86, Giur., 1886, 674.

Where there are several concurrent claims of the classes specified in clause 13 [*suprà*] : then priority is determined by the date of the copy of the title, and of its being noted in the ship's register [*atto di nazionalità*].

Privileged debts confer no rights against insurance money, C.A., Genoa, 5 R.I.D.M. 695, C.C., Turin, 1 R.I.D.M. 257. But they continue as against the ship in the hands of the insurers after abandonment, C.A., Genoa, 1 R.I.D.M. 657.

B. 4, F. 191 (1885), 34, 39, G. 754, H. 313, 315, P. 578, 594, S. 580, E. 5, Sc. 268, 269.

The liens on a ship recognised by English law may be divided into four classes:—

(1.) *Maritime*, including those of salvors, seamen for wages, and persons whose property is injured by a collision on the high seas, against the other ship.

(2.) *Statutory*, including those against a vessel, of which no owner is domiciled in England or Wales, for damage to cargo carried into an English port (24 Vict., c. 10, § 6), for necessaries supplied elsewhere than in the ship's home port (3 and 4 Vict., c. 65, § 6; 24 Vict., c. 10, § 5), wages earned on a special contract, (24 Vict., c. 10, § 10), and towage (3 and 4 Vict., c. 65, § 6).

(3.) *Possessory*, including those of a material man for repairs, and of a Dock Company for dues so long as the vessel remains in their hands.

(4.) *Statutory Maritime*, or *quasi-maritime* including those against a wrong-doing vessel for damages done within the body of a county (3 and 4 Vict., c. 65, § 6; 24 Vict., c. 10, § 7), salvage within the body of a county (3 and 4 Vict., c. 65, § 6), life salvage (57 and 58 Vict., c. 60, § 544), master's wages and disbursements (57 and 58 Vict., c. 60, § 167).

For the order in which these various liens rank, both against the ship, and *inter sese*, see McLachlan on *Merchant Shipping*, chap. xv., and *Enc. Britt.*, supp., art. "Liens".

676. An indorsee [*giratario*], transferee [*cessionario*], legal substitute [*persona surrogata*], or a creditor who has received in pledge a debt secured on the ship already copied and entered (on the register), may have the endorsement, transfer, substitution, or that which constitutes the pledge, noted on the registry of the Maritime Administration and on the ship's register.

See Art. 76 of the Order for putting the Commercial Code in force (*post*). There is no similar provision to this in the other Continental Codes; it appears to be a very advisable provision in view of Arts. 668, 670 (*ante*).

677. The privileges enumerated in the preceding articles cannot be enforced unless the debts are proved and the privileges preserved as follows:—

(1.) Law costs, by the scale of charges decreed by the proper judge in the form established by the Law of Procedure.

(2.) Expenses, compensations, and charges for salvage and pilotage by the depositions on oath of the adminis-

tration of the mercantile marine or by such other proof as the judicial authority shall deem admissible under the circumstances.

(3.) Navigation dues [*tasse di navigazione*], by the legal receipts of the proper authorities.

(4.) The wages of watchmen and expenses of watching mentioned in Art. 675, clause 4, and the debts enumerated in Art. 671, clause 5, and Art. 675, clauses 5 and 6, by means of statements of accounts approved by the President of the Tribunal of Commerce.

(5.) The wages and perquisites of the captain and crew by the lists of shipment and discharge [*ruoli di armamento e di disarmamento*] (of the crew) extracted from the office of the Mercantile Marine Administration; other compensations by the report of the captain and by other evidence of the circumstances which give a right to this. The repayments to the Mercantile Marine Sick Fund by the accounts ("*deconti*") drawn up in accordance with provisions of the law and special regulations.

(6.) The debts due for general average contribution by the general average statement of apportionment [*ripartizione*].

(7.) The debts mentioned in Art. 671, clause 8, Art. 673, clause 6, and Art. 675, clause 9, by means of declarations [*processi verbali*], signed by the principal members of the crew, the formal authorisation [*decreti di autorizzazione*] of the accounts, signed by the captain and approved by experts, receipts and declarations signed by him (the captain), or by any other documents which prove the necessity of the expense.

(8.) Premiums of insurance, by the policies of insurance, by the "slips" ("*buoni*"), or other documents signed by the assured, and by extracts from the books of regular insurance brokers [*mediatori di assicurazione*], the apportionments and contributions in the case of mutual assurance associations by extracts from the register showing when ships are admitted into it.

(9.) Compensation due to shippers by the judgments which decide this amount, if judgment ordering the repayment of the damage has been pronounced at the time when the proceeds of the ship are distributed, but, if the amount is not then ascertained, then according to circumstances, either all the creditors who claim compensation may settle for a lump sum approximate in amount [*somma approssimativa*] thereto and give security to repay any excess, or the creditors ranking below them may settle in the same way, giving security [*cauzione*] to repay if necessary.

(10.) The sale of a ship, by the bill of sale copied out and noted in the manner prescribed in Art. 483.

(11.) The debts mentioned in Art. 671, clause 9, Art. 673, clause 8, and Art. 675, clause 13, by the vouchers [*scritture*] relating to those copied and noted in the manner prescribed.

B. 5, F. 192 (1874), 27, S. 580, E. 6.

The methods of proof given in this article must be strictly adhered to; no other proof is admissible, C.A., Genoa, 4, 12, 86, and 18, 12, 86, Eco. Giur., 1886, 369, 1887, 26, C.C., Turin, 9, 8, 87, D.C. 87, 843. As regards (4), even if there is no opposition to the claims themselves an application may be made to marshal them *inter se* (C.A., Venice, 12, 5, 85; Temi V., 1885, 302).

678. Independently of the ordinary way in which legal obligations are extinguished, the privileges which creditors have against a ship are extinguished:—

(1.) By a sale by order of court, at the instance of creditors, or for any other cause, with the formalities prescribed in book iv., and after the proceeds on to which the privilege is transferred are paid out.

(2.) By three months' lapse of time [*decorso*] in the case of a voluntary transfer [*alienazione*] of the ship. This term runs from the date of the document of transfer being entered (on the ship's register), if at the time of the transfer the ship is within the limits of the department [*compartimento*] where she is registered, and from the date of her return into the said department, if the transfer is entered after the ship has sailed, provided that the sail is notified to the

privileged creditors, whose titles to claim are found entered and noted on the ship's register within one month of the entry (of the transfer). There is no extraction of the debt where a creditor who has a privilege has before the end of this term summoned the purchaser before the Court to get a formal declaration of his privilege.

B. 6, 237, F. 193, 197, G, 764, 765, H. 316, 319, S. 582, E. 7-9, Sc. 271, 283.

A maritime lien may in England be lost by *laches* in enforcing it, and is purged by a sale by the Court of Admiralty. A statutory lien appears only to attach so long as the vessel does not change hands (the *Heinrich Bjorn*, 11 App. Cases, 270). A possessory lien is only in force so long as the claimant retains possession. Maritime liens by statute appear to have the same incidents as ordinary maritime liens.

679. The person who acquires a vessel, or a share in a vessel, must, to clear (his property) from liability for privileged debts for which he is not personally responsible, notify to the creditors, before the vessel is seized [*pignorata*], or arrested [*sequestrata*], a document containing:—

(1.) The date and nature of his title, and the date of its entry (in the register), and of its being noted on the ship's register.

(2.) The name and surname of his transferor [*autore*].

(3.) The name, description, and burden of the ship.

(4.) The purchase money agreed on, and any other condition laid upon the purchaser, or the value which he proposes to pay.

(5.) A list of the creditors, showing their names and surnames, the amounts due to them, the dates of their claims, and of their being entered (in the registry), and noted on the ship's register.

(6.) The offer to place the agreed price, or declared value, on deposit [*depositare*], for division amongst the creditors.

(7.) An address for service [*elezione del domicilio*] within the commune in which the court sits, which would be the proper one to sell the ship by auction [*incanto*], if that should be done.

A *précis* [*estratto sommario*] of this document must be inserted in the journal that contains legal notices, in the place

where the maritime office in which the vessel is registered is situated, and this *précis* is sufficient notice of such debts as are not bound to be specially published.

B. 2, 3, G. 765, H. 316, 319, E. 7, 91, Sc. 271, 273, 274.

680. Every privileged creditor, or guarantor of privileged debts, can, within a fortnight of the aforesaid notification and advertisement, demand a sale by auction, on offering to raise the price by $\frac{1}{10}$, and to give security for the payment of the purchase money, and to satisfy every other claim.

This demand, signed by the claimant, or by a specially authorised agent [*procuratore speciale*], must be notified to the purchaser, with a summons before the civil tribunal of the place where the ship is registered, so that it may decide as to the admissibility of the security and on the demand for sale.

681. If a sale is not demanded within the time and in the manner prescribed by the preceding article, or if the demand is rejected, the purchase money remains definitely settled [*fissato*], and on depositing it the purchaser acquires the property in the ship, or share in the ship, clear of all privileges. The privileges are transferred to the proceeds, which are distributed, as in the case of a sale by the court.

If the demand (for a re-sale) is allowed, the court sanctions the sale by the same judgment, and it is then carried out according to the provisions of bk. iv., tit. i., ch. ii.

Taking this article in conjunction with Art. 679 (6) (*ante*), it would appear that a purchaser is not safe in paying over the money to the vendor, even if the application of a creditor under Art. 680 (*ante*), fails. On such an application being made, he should pay the money into court, or place it on deposit to abide the order of the court, leaving the creditors and vendor to settle their claims amongst themselves.

682. The entry [*trascrizioni*] and noting [*annotazioni*] of privileges can only be cancelled by the consent of those interested, or by a judgment which cannot be resisted or appealed [*non più soggetta ad opposizione od appello*].

Any one has a right to obtain a document showing that there are one or more entries [*trascrizioni*] against a ship, or against a share in it, or a certificate that there are none.

END OF BOOK II.

Book IV.

Of the Prosecution of Commercial Actions and of Their Duration.

It has been found practically impossible to carry out, with regard to book iv., the system of cross notation to other Codes, and it is felt that, even if carried out, it would have caused more disappointment than satisfaction to any one using the translation, and this for the reason that the present is the first Code which has attempted to lay down in consecutive order a course of procedure in maritime matters. In Belgium, a considerable portion of the law has been relegated to the Code of Civil Procedure, pending the reform of that Code; but numerous provisions can only be picked out of what we should call the Statute Book, and references to that would be about as edifying to the English reader as references to our *Merchant Shipping Act*, 1854, *and the Acts amending the same* would have been to the foreigner prior to the Consolidating Statute of 1894. The same remark applies to France, except that the prospect of a new Code of Civil Procedure is less likely to be realised there owing to the disturbed condition of politics in that country. Spain has succeeded in producing a new Code of Commerce, in which part of the procedure is to be found, while the rest remains in endless *Revistas* and *Nuevas Revistas*, and *Nuevissimas Revistas*, by which in the course of the last thirty years or so, jurisdiction has been given to, and taken away from, commercial tribunals. In Germany, much depends on the local State law, whilst other matters are governed by the Code of Commerce. Again, in the Scandinavian States (Sweden, Norway, and Denmark), by recent legislation, the Maritime Law of all is made practically identical. It has, therefore, been thought best, in the interests of the reader, as well as of any person who hereafter may have to verify the cross-references, not to cumber this edition with them, but simply to give a translation of those articles which affect ships.

The commercial tribunals were abolished in 1888 (see law of 25th Jan., 1888, *post*), but the practice herein laid down is preserved *mutatis mutandis* before the ordinary civil tribunals.

TITLE I.

Of the Prosecution of Commercial Actions.

CHAPTER I.

General Provisions.

ART. 868. The prosecution [*esercizio*] of commercial actions is regulated by the Code of Civil Procedure, saving the provisions of the present Code.

869. The commercial jurisdiction has cognisance of :—

(1.) All disputes relating to commercial affairs [*atti di commercio*] between all sorts of persons.

(2.) Actions to annul or confirm the arrest [*sequestro*] of a ship, although it was obtained for non-commercial debts.

(3.) Actions against captains of ships, agents [*institori*], or representatives, commercial travellers [*commessi viaggiatori*], and brokers [*commessi di negozio*], arising out of the business they undertake ; and actions relating to these persons against their principals within the same limits.

(4.) Actions by a passenger against the captain or charterer [*armatore*], and by a captain or charterer against a passenger.

[(5.), (6.), (7.), (8.), are omitted here, as not relating to maritime concerns.]

If the dispute includes a question of inheritance, the cause is sent to the proper civil court to decide the question, saving the cognisance of the merits of the case to the commercial jurisdiction.

870. If the affair [*atto*] is one of trade [*commerciale*] for only one of the parties, actions arising out of it are within the commercial jurisdiction.

871. In case of commercial disputes arising during fair [*fiera*] or market [*mercato*] times, for which it is necessary to provide without delay, the prætor of the place, even if the cause is one which he is not competent to decide, may make suitable *interim* orders, and remit the parties to the proper court.

a judicial deposit [*deposito giudiziario*] may be made of a sum of money, by consent of the parties, in any public credit establishment [*istituto di credito*], or even with a private banker [*privato banchiere*].

CHAPTER II.

The Attachment [Sequestro], Arrest [Pignoramento], and Sale of Ships by the Court.

879. Every creditor has a right to proceed to arrest or attach, and to sell a ship, or an undivided share thereof, which belongs to his debtor, on carrying out the formalities hereinafter stated.

As to the priorities between an unregistered creditor and an unregistered purchaser, see C.C., Florence, 15, 11, 86, Temi V., 1886, 587. One part owner cannot resist the sale of a portion of the ship belonging to another part owner at the suit of a creditor, C.A., Genoa, 25, 4, 85, Eco. Giur., 1886, 82. But an execution creditor is not a vendor in such sense as to be liable in an action by purchaser for delay in delivery of the vessel, C.C., Turin, 22, 12, 85, Eco. Giur., 1886, 82.

Privileged creditors can exercise this right, even if the vessel subject [*vincolata*] in whole or in part to their claim has passed into the hands of a third party.

S. 584.

880. A vessel may be arrested in the cases, and adhering to the formalities, laid down by Art. 921, and those following it, in the Code of Civil Procedure.

On an arrest being declared valid by the proper tribunal of commerce, the sale, marshalling [*graduazione*] of creditors, and apportionment [*distribuzione*] of the proceeds are carried out in conformity with the rules laid down in the present chapter.

See Art. 921, C. Pr. C. (*post*).

A vessel legally arrested abroad and breaking her arrest may be arrested again in an Italian port for this fact alone, without regard to the validity of the original arrest, C.A., Genoa, 10 R.I.D.M. 353, 26 J.D.I.P. 191. An arrest in a salvage suit is not allowed unless some one or more of the conditions mentioned in Art. 924 of Code of Civ. Proc. exist, C.A., Genoa, 6, 3, 85, D.C. 1885, 423. Though civil proceedings are stayed pending criminal process an arrest may be maintained, Trib. Civ., Genoa, 27, 12, 98, 15 R.I.D.M. 246, and a vessel once arrested can only be released by the same court, C.A., Catania 7 R.I.D.M. 459.

881. A ship when ready to sail is not subject to arrest or attachment.

A ship is deemed to be "ready to sail" [*pronta a partire*] when the captain has got his ship's papers [*carte di navigazione*] for the voyage.

P. 491.

A ship cannot be arrested in the course of a voyage, C.A., Catania, 1 R.I.D.M. 61, C.A., Genoa, 1 R.I.D.M. 64, 409, C.A., Messina, 6, 2, 82, Eco. Giur., 1882, 204. If a commander does not produce his papers to set aside an arrest it is presumed he has not got them, C.A., Genoa, 4, 2, 87, Eco. Giur., 1887, 84. A ship is not ready to sail till she has got her bill of health C.C., Palermo, 13 R.I.D.M. 817.

882. At any stage of the proceedings, the tribunal before which the cause is pending may, at the request of a creditor who has a privilege on the ship, or of a co-owner of the ship, or even of the debtor himself, permit the vessel to undertake one or more voyages, prescribing such safeguards [*cautele*] as seem to the court suitable to the circumstances.

The voyage cannot be commenced until the order of the court is entered in the registry of the Marine Administration and noted on the ship's register [*atto di nazionalità*]. The disbursements necessary for the voyage must be advanced by the person requiring it to be made. The amount of freight [*nolo*], less disbursements, is added to the price realised by the sale.

S. 584.

883. The order (writ or præcepe) [*precetto*] for proceeding against [*esecuzione*] a ship or a share in a ship must contain a notice to the debtor to pay the amount due within twenty-four hours, and a warning that if not paid within this time the vessel will be attached.

If there is any danger of the vessel being removed [*sottrazione*], the prætor may authorise an immediate attachment in the manner laid down in the Code of Civil Procedure, Art. 578.

Mere notice threatening an execution on personal property will not suffice, C.A., Bologna, 20, 7, 90, 6 R.I.D.M. 339. And care must be taken that it is executed by the proper officer, 8 R.I.D.M. 614, and contains proper particulars (see next Art.), C.A., Catania, 27, 4, 85, D.C., 1885, 818.

884. The writ [*precetto*] must contain an address for service

[*elezione del domicilio*] in the commune where the tribunal before which the proceedings are carried on sits, stating the name of the person at whose house it is given [*con indicazione della persona presso la quale il domicilio è eletto*].

The writ must be served on the owner in person, if the action arises out of an ordinary [*generale*] claim against him; it may be served on the captain if the debt is one of those which confer a privilege [*credito privilegiato*] against the ship.

A writ ceases to be effective [*inefficace*] if thirty days have elapsed without further proceedings being taken. If there is any application to set aside [*opposizione*] this time runs from the notice of a judgment which determines the question which has arisen, or from the day on which the defence has been set aside [*perenta*].

885. The officer of the court [*usciere*] must set out [*enunciare*] in the formal statement [*processo verbale*] of the attachment, in addition to that which is prescribed by Art. 597 of the Code of Civil Procedure :—

(1.) An address for service, or declaration of a domicile or residence within the commune where the tribunal before which the proceedings for the sale of the ship are carried on sits, and in the place where the vessel which is attached is lying at anchor.

(2.) The name and surname, domicile or residence of the shipowner and of the captain.

(3.) The name, description [*specie*] and burden [*portata*] of the ship.

(4.) A list of the gigs [*schifi*], boats [*scialuppe*], apparel [*attrezzi*], and furniture [*arredi*], stores [*armi*], implements [*munizioni*], and provisions [*provviste*].

The officer of the court must appoint a watchman [*custode*] to the ship attached, who must sign the formal statement of the arrest.

886. If the owner of the ship which is attached resides or is living in the commune in which the proceedings for the attachment are taken, the creditor who is taking proceedings must, within three days, serve him with a copy of the formal statement of the arrest and summon him before the civil tribunal of the place where the proceedings are carried on,

as a preliminary to carrying out the sale of the things which are attached.

If the owner has no residence [*residenza*] or abode [*dimora*] within such commune, the notices and summonses are served personally on the captain of the ship which is attached, and in his absence on the person who for the time being represents the owner or the captain.

If the owner is a foreigner [*straniero*] and has no residence or abode within the realm, notices must be served in the manner prescribed in Arts. 141 and 142 of the Code of Civil Procedure.

Another copy of the formal statement of arrest must be lodged by the officer of the court in the place in which the vessel is registered [*inscritta*].

887. The tribunal which gives authority for the sale must lay down the conditions on which it is to take place, and remit the parties to the judge to whom the matter is assigned [*giudice delegato*], to fix a day for the sale by auction [*incanto*] and for other matters necessarily incident thereto.

The tribunal must also give orders to the registrar [*cancelliere*] to advertise the sale [*formare il bando*].

888. The attachment becomes void [*perento di diritto*], and the attaching creditor liable for the expenses of it, if the sale does not take place within the next forty days. The time occupied in defending the action, as shown in Art. 884, is not included in this period.

The forty days runs from the date of the decree authorising the sale, C.A., Venice, 9, 5, 90, 6 R.I.D.M. 338.

889. The advertisement [*bando*] must state:—

(1.) The name and surname, profession and residence, domicile and address of the creditor who is taking the proceedings [*creditore istante*].

(2.) The nature of the claim [*titoli*] in respect of which he is proceeding.

(3.) The amount due.

(4.) The address for service of the creditor taking proceedings in the commune where the tribunal before which he is proceeding sits, and in the place where the vessel is lying.

(5.) The name and surname, residence, domicile or dwelling of the owner of the ship which is attached.

(6.) The name, description, and burden of the vessel, whether it is fitted [*armata*] out or fitting out [*in armamento*], and the name and surname of the captain.

It is not necessary to state whether the ship has cargo on board or not (C.C., Turin, 2 R.I.D.M. 213).

(7.) The place where the vessel is lying ashore [*giacente*] or afloat [*galleggiante*].

(8.) The gigs, boats, apparel and furniture, stores [*armi*], implements [*munizioni*], and provisions included in the sale.

(9.) The name and surname of the proceeding creditor's solicitor [*procuratore*].

(10.) The conditions of sale.

(11.) The times [*udienza*] fixed for receiving bids [*incanto*].

890. The advertisement is published by being posted up [*affissione*] :—

(1.) On the mainmast [*albero maestro*] of the attached ship.

(2.) On the principal entrance of the court house where the tribunal before which the proceedings for sale are taken sits.

(3.) In the principal open space [*piazza principale*] and on the pier [*molo*] or quay [*scalo*] of the port in which the vessel is lying at anchor, and in the custom house of the place.

(4.) In the rooms of the exchange [*sale di borsa*] and chamber of commerce.

A *précis* [*estratto sommario*] of the advertisement must be inserted in the newspaper which contains legal notices [*giornale degli annunzi giudiziarii*] three days before the sale.

The advertisement must also be notified :—

(1.) To the debtor or to the captain in the cases for which provision is made in Art. 510.

(2.) To the person appointed as watchman [*custode*] by the officer of court.

(3.) To the privileged creditors mentioned on the ship's register, or in the registry of the place in which the

vessel is registered, and to any other creditor, although not a privileged one, who has in writing formally given notice [*con atto notificato*] to the proceeding creditor of his intention to intervene in the proceedings.

891. If the attachment is on a vessel of more than thirty tons burden, the placard [*bando*] must be published, and a *précis* inserted in the newspaper containing legal notices three times consecutively, from week to week. After the placard has been published the first time the judge to whom the proceedings for sale are assigned receives the bids [*offerte*] through the registry [*cancelleria*].

After the placard has been published the third time, the auction [*incanto*] is opened in the presence of the judge to whom the matter is assigned [*giudice delegato*] at the time fixed, and the sale is made to the person who is the highest bidder [*maggior offerente*], at the time when a previously unused candle goes out [*ad estinzione di una candela vergine*], without any other formality.

This method of fixing a time more or less by chance is common in judicial proceedings abroad, and many traces of it are to be found in former days in England.

892. The judge to whom the matter is assigned may, for sufficiently strong reason [*per gravi motivi*] allow and even officially [*d'ufficio*] order one or two stays of proceedings [*dilazioni*] of a week each.

These stays are notified by public advertisements [*avvisi*] and postings up in the manner prescribed above.

893. Any one may bid at the auction.

A person who bids on behalf of some one else must produce a special authority [*mandato*] and attach it to his tender [*atti*].

Only solicitors [*procuratori*] lawfully practising before the tribunal may bid at the auction on behalf of an undisclosed principal [*persona da dichiararsi*].

Every bidder must deposit in cash [*danaro*] in the registry the approximate amount of the expenses of the auction and of the sale, and of the amount of the debt [*trascrizione*] mentioned in the public notices.

He must also deposit in cash or in State Funds [*titoli del*

debito pubblico dello Stato] at the current rate of exchange [*valore di borsa*] payable to bearer, one-tenth of the price at which the biddings commence, unless the judge, after hearing the creditors who are present, dispenses with it.

The parties who are obliged to make a deposit can do so either directly in the Treasury [*cassa dei depositi e prestiti*] of Deposits and Loans, or in the Post Office Savings Bank [*casse di risparmio Postali*], on handing the receipt to the registrar [*cancelliere*].

A person who is outbidden [*vinta*] is entitled to the immediate return of the deposit he has made.

894. A formal statement is drawn up of everything that occurred during the auction, in which the person adjudged to be the highest bidder [*aggiudicatario*] must give an address for service in the commune where the sale is effected; failing this, notices to him are properly served by being left in the registry [*cancelleria*] of the tribunal.

895. A solicitor [*procuratore*] who is adjudged purchaser [*aggiudicatario*] on behalf of an undisclosed principal [*persona da nominare*] must, within three days next following the auction, deposit in the registry a special authority [*mandato*] given before the sale, unless the person on whose behalf he has tendered prefers personally to adopt it by a declaration received by the registrar [*cancelliere*]; failing this, the bidder [*offerente*] is considered as having been judged purchaser on his own behalf.

896. The purchaser of the ship is bound to deposit the remainder of the purchase money within five days. In case of default in so doing, the vessel is put up to auction again at the risk and expense of the (first) purchaser, by order of the judge to whom the matter is assigned. The re-sale [*rivendita*] takes place three days after a new and single public notice [*bando*]. The purchaser who has made default [*inadempiente*] is bound to pay the difference between the sale price to him and the re-sale, besides damages [*danni*] and expenses, out of the deposit he has made.

If, before the re-sale takes place, the original purchaser [*compratore*] satisfies [*giustifica*] the judge to whom the sale is assigned, by bringing in the purchase money with interest and

the expenses caused [*opere occorse*] by the requisition for re-sale, the re-sale does not take place.

897. If the vessels attached are barges [*barche*], boats [*scialuppe*], or other vessels of not more than thirty tons burden, the sale is effected before the judge to whom the matter is assigned, after the publication on three successive days of a single notice [*bando*] affixed to the mast, or, if there be no mast, to any other prominent [*apparente*] part of the vessel, at the outer [*esterna*] door of the court house, and on the pier [*molo*] or quay [*scalo*], without other formality.

The sale cannot take place until eight clear days have elapsed from the notification of the attachment.

898. The provisions of the preceding articles are applicable to boats [*battelli*] intended to carry passengers, and for fishing in harbours, basins [*darsene*], canals, lakes, and rivers, and for flats [*chiatte*], barges [*barconi*], and other craft belonging to such places, if they do not exceed ten tons burden, with the following modifications:—

(1.) The proceedings are before the prætor.

(2.) The advertisements in the newspapers are not necessary.

(3.) A previous deposit [*precedente deposito*] is not compulsory, but the last and highest bidder is bound to pay the purchase money and expenses at once, and in default of his so doing a re-sale is at once proceeded with at his expense.

Boats and other craft [*galleggianti*] fitted with steam machinery are not included in the vessels referred to in this article.

899. The sale of the ship terminates the functions of the captain, excepting any claim he may have against those whom it concerns [*virso chi di ragione*].

Consequently though the commander is rightly made defendant in a suit by creditors for a sale, after the sale, on an appeal, the proceedings must be against the owner himself, C.C., Turin, 11, 4, 96, 12 R.I.D.M. 219.

900. The person adjudged purchaser receives an extract from the account of the sale [*processo verbale*], stating:—

(1.) The names, surnames and residences of the plaintiff, creditor and debtor.

(2.) The name, description and burden of the ship which is sold.

(3.) The name, surname and residence of the purchaser.

This extract must be copied into the register at the place in which the vessel is registered, and the sale must be noted on the ship's register.

901. Demands for the withdrawal (of things) [*separazione*] from the ship which is attached must be notified to the plaintiff-creditor [*creditore istante*] before the sale.

A demand for withdrawal made subsequent to the sale is transferred as of right [*di diritto*] into a claim upon the purchase money.

A demand for withdrawal must include a summons [*citazione*] to the plaintiff-creditor to appear at the hearing [*comparire a udienza*] of the matter before the proper tribunal, and an address for service, or a declaration of domicile or residence in accordance with the provisions of Art. 647 of the Code of Civil Procedure.

If the demand is rejected, the claimant, besides costs and damages incurred, may be condemned in a money fine [*pena pecuniaria*] not exceeding 500 *lire* (say £20).

902. Claims against the purchase money must be made within three days from the day of the sale under penalty of being set aside [*decadenza*].

The creditors who are claiming must produce their vouchers [*titoli di credito*] in the registry within eight days of making their claim; failing their production within the period prescribed, the distribution of the purchase money proceeds without their claims being included.

There is a doubt whether delay in production of vouchers sets aside the claims, C.A., Genoa, 18, 12, 86, 29, 12, 86, Eco. Giur., 1886, 369, 1887, 5.

903. The marshalling [*graduazione*] of the creditors and distribution of the proceeds is carried out, as regards privileged creditors, in the order laid down in Art. 675, and as regards other creditors *pro ratâ* on the debts.

The costs of an arrest by a creditor in his own interest are not such court fees as carry a privilege, C.A., Venice, 19, 5, 85, Temi V., 1895, 302.

904. The provisions of the Code of Civil Procedure with respect to the forced sale of chattels [*esecuzione forzata sui*

mobili] are applicable where no special regulation is made in this title. The rules laid down in the present chapter are to be observed in any other case of a judicial sale of a ship, or a share in a ship, in so far as they are applicable. See C.P.C. 578 (*post*).

[Ch. iii. is omitted as relating to procedure in bankruptcy.]

TITLE II.

Of Prescription [*Prescrizione*].

915. Actions arising out of matters [*atti*] which are commercial even for only one of the parties are limited [*si prescrivono*] for all parties to the contract in conformity with the commercial law.

This follows naturally from Art. 54, Code of Commerce, (*post*).

916. The time for limitation runs even against soldiers on active service in war-time, against a married woman, and against infants [*minori ancorchè non emancipati*] and persons under a disability [*gli interdetti*], saving their remedy [*regresso*] over against their guardian [*tutore*].

The suspension [*interruzione*] of the limitation is regulated in accordance with the provisions of the Civil Code (Arts. 1,309, 2,123, 2,141).

Nevertheless, in bill transactions [*obbligazioni cambiarie*], matters that interrupt [*atti interruttivi*] the period of prescription in respect of one of the co-defendants [*co-obbligati*] have no effect in respects to the others.

917. The ordinary period for prescription in commercial affairs is ten years, in all cases in which neither this present Code nor other laws lay down a shorter period.

918. An action to recover [*rivendicare*] possession of a vessel is barred [*si prescrive*] by the lapse of ten years. A plea of defect in title or *mala fides* is not available (to extend it).

A person who possesses a vessel in virtue of a *bonâ fide* transfer [*titolo*] properly registered [*trascritto*], and which is not invalid by reason of any informality, perfects his title to it by prescription by the lapse of five years from the date

of transfer [*trascrizione del titolo*] and its entry [*annotazione*] on the ship's register.

A captain cannot acquire the property in the ship (which he commands) by prescription.

S. 573.

[919. Omitted as relating to public companies, bills of exchange, and cheques.]

920. Actions arising out of contracts of bottomry [*prestito a cambio marittimo*] or mortgage [*pegno*] on a ship are prescribed by the lapse of three years from the date on which the cause of action arose [*scadenza dell' obbligazione*].

[921. Omitted as relating to prescription in bankruptcy proceedings.]

922. Actions by brokers [*mediatori*] for their commissions [*diritto di mediazione*] are prescribed by the lapse of two years from the day on which the business was concluded.

[The rest of this article is omitted as relating to prescription in actions to set aside bankruptcy proceedings.]

923. Actions for compensation of damages [*risarcimento di danni*] caused by collision [*urto*] between ships are prescribed after the lapse of one year, counting from the day on which the protest or claim mentioned in Art. 665 was made; and actions for general average contribution, after a lapse of one year from the time of the discharge [*scaricamento*] being completed.

F. 436 [1891] see note to next article.

924. Actions arising out of contracts of affreightment [*contratto di noleggio*] are prescribed after the lapse of one year from the termination of the voyage, and those arising out of shipping articles [*contratto di arruolamento*] are prescribed after the lapse of one year from the end of the agreed term, or from the end of the last voyage, if the contract has been extended.

Actions on policies of insurance [*contratto di assicurazione*] are prescribed after the lapse of one year.

In marine insurance the time is reckoned from the completion of the voyage insured and in time policies [*assicurazioni a tempo*] from the day on which the insurance expired. In case of the presumption of the loss of a ship in consequence of no tidings being received of her (*i.e.*, in the case of a missing ship), the year commences at the end of the period laid down

for presuming the loss (see Art. 633); saving always the further periods laid down in case of an abandonment in bk. ii., tit. vi.

In other insurances against loss and on lives the time begins to run from the moment at which the event happens which gives rise to the action.

In the case of seamen's wages, under articles, or commander's salary settled by an agreement, the term for prescription begins to run from the date of discharge, C.C., Turin, 2 R.I.D.M. 734, C.A., Genoa, 11 R.I.D.M. 374.

"Termination of the voyage" in respect to contracts of affreightment refers to the voyage or passage on which the goods were carried, not to the ship's return to her home port, a letter asking for payment does not interrupt the prescription running in the sense of Art. 2,125 of Civil Code, 19, 6, 96, C.A., Genoa, 12 R.I.D.M. 374.

Where a claim to abandon fails and is succeeded by an action for average losses the term of prescription runs for both concurrently, 16, 6, 93, C.A., Genoa, 9 R.I.D.M. 294.

An action by a passenger for damages sustained through the ship sailing to a port which the commander knew to be closed for sanitary reasons or for personal injuries, C.A., Rome, 15 R.I.D.M. 533, is not subject to this prescription. The time only runs from the date of the ship's return home with the passenger (C.C., Turin, 10 R.I.D.M. 344), nor is it applicable to a contract demising a ship for a term at a monthly or other terminal rate, 25, 3, 96, C.A., Genoa, 12 R.I.D.M. 227.

Claims against the carrying ship for loss of life or personal injuries in a collision are prescribed by the lapse of one year, 2, 7, 97, C.A., Naples, 13 R.I.D.M. 434.

Sc. 264.

925. The following actions are also prescribed after the lapse of a year:—

(1.) Those for payment for provisions [*amministrazioni di vettovaglie*], timber [*legnami*], fuel, and other necessaries supplied for the repair or fitting-out of a vessel for a voyage, and for work done for the same object.

This prescription does not apply to articles supplied before the voyage is undertaken, C.C., Turin, 5 R.I.D.M. 695.

(2) Those for boarding [*alimento*] seamen and other members of the ship's company by the order of the captain.

The time runs from the date at which the goods were supplied, or the work done, unless any time (for payment) was agreed on, in which case the time for prescription does not run during the period [*dilazione*] so agreed on.

If the supplies [*somministrazione*] and labour [*prestazione d'opera*] are continuous for several days in succession, the year is reckoned as commencing on the last of the days.

926. Actions against a carrier [*vettore*] arising out of the contract for carriage [*trasporto*] are prescribed:—

(1) By the lapse of six months, if the despatch was to a place in Europe, excepting Iceland and the Faroe Islands, or to a seaport of Asia or Africa, in the Mediterranean or Black Seas, or the Suez Canal, or the Red Sea, or to any inland place [*piazza interna*] connected with such ports by railway.

(2) By the lapse of one year, if the despatch [*spedizione*] was made elsewhere.

The time begins to run in case of total loss from the day on which the goods despatched ought to have arrived at their destination, and in case of partial loss, injury [*avaria*], or delay from the day on which the goods are delivered [*riconsegna*].

END OF BOOK IV.

Provisional Dispositions [Legge Transitoria Commerciale].

By Royal Decree of 14th December, 1882, Provisional Dispositions were enacted for the execution of the Commercial Code.

The following relate to the maritime portion of the Code :—

Art. 13. All contracts for building, acquiring, or hiring [*godimento*] a ship or part of a ship, and contracts of mortgage [*pegno della nave*] and bottomry on a ship, already made in accordance with the previous law, remain in full force if the formalities were concluded before the new Code came into force ; otherwise the dispositions of the new Code apply.

14. Requires all vessels to conform to Art. 500 of the new Code within six months from the date of its coming into operation, or if at sea at that time then within six months of arrival at a port within the realm.

15. Privileged debts [*privilegi*] upon ships under the old law are preserved intact [*conservano il loro grado*] and the provisions of Art. 678 and those following it are made retrospective.

17. Proceedings which are in progress [*pendenti*] to attach, arrest, and sell vessels, and to divide the proceeds, are to be carried on at once in accordance with the provisions of the new Code (bk. iv., tit. i., ch. ii.).

18. The periods of time by which an action is barred [*I termini per l'inamissibilità*] are governed by the law in force at the time of the event which gives rise to the action.

19. Times which have begun to run so as to prescribe actions before the new Code came into operation continue to be governed by the former laws, except where the period for prescription is shortened by the new Code where it is to apply.

ORDER [*REGOLAMENTO*] FOR CARRYING OUT THE CODE OF COMMERCE.

[Titles I.-IV. do not relate to Maritime Law.]

TITLE V.

Dispositions Concerning Maritime Commerce and Navigation.

Art. 68. Declarations and contracts for the building, acquiring, and hiring [*godimento*] of ships, as also contracts of mortgage and bottomry when made by private deed [*per scittura privata*] (= *sous seing privé*) cannot be received for registration [*trascrizione*] on the Register of Shipping, unless the signatures of the parties are verified [*autenticate*] by a notary, or judicially recognised [*accertate giudizialmente*]. Nevertheless, the above-mentioned documents [*atti*], where they refer to boats [*battelli*], or other harbour craft [*galleggianti*], which are exempted from the obligation of having a register, may be received for the purpose of being entered [*annotazione*] on the register mentioned in Art. 900 of the Regulations [*Regolamento*] for putting in force the Mercantile Marine Code, although the signatures are verified [*legalizzate*] only by the syndic.

69. Ships and other harbour craft, intended only to navigate on lakes and rivers, can be entered on a register in the form [*modello*] (E) annexed hereto, in a special office assigned for the purpose; and, if there be no such office, then in the communal office of the place where the ships or other craft are usually stationed [*tenuti*]. If the place is changed, the person in charge of the office above mentioned, or the syndic of the commune where the entry is made, must forward a copy of the entry [*partita*], with all the things noted [*annotazioni*] upon it, to the syndic of the place in which the new station (of the vessel) is located.

70. Specifications [*dichiarazioni*] and contracts for the building, ownership, or leasing of the vessels and harbour craft mentioned in the last clause [*capoverso*] of Art. 68 and in Art. 69, and all restrictions on the free disposal of them arising from

a mortgage or other lien [*vincolo*] have no force as regards third parties, unless either the original documents on which they are based, or verified copies [*copia autentica*] of them, are lodged in the office, and entered on the registers mentioned in the said articles.

The entries [*annotazioni*] must be made at once, on the personal responsibility of the special official, or of the syndic; and the documents which are presented in support of the request for registration must be preserved in a book provided with an index [*elenco*] and alphabetical list [*rubrica*] of the names of the owners and others who have claims [*aventi diritto*].

71. The ship's inventory, mentioned in Art. 500 of the Code of Commerce, must be made out in accordance with the form established by the Ministry of Marine.

It must contain a printed list [*indicazione*] of the apparel [*oggetti di corredo*] and furniture in use, and of the spare stores [*attrezzi fissi e di rispetto*] required by Maritime Laws for each sort of voyage, and according to whether it is a sailing vessel or a steam vessel; it must also contain a statement in writing of the amount of the above mentioned things and other things which are actually on board the ship.

The inventory must be signed by the captain and countersigned [*vidimato*] by the officer, or by the experts [*periti*], whose duty it is to survey [*visita*] the vessel in conformity with the provisions of Art. 78 of the Mercantile Marine Code.

72. Changes [*variazioni*] in the ship's inventory must be stated in the columns assigned for the purpose in the form mentioned in the preceding article, and they will be proved [*giustificate*] summarily by a simple reference to the remarks which are found in the log-book [*giornale generale nautico*].

The officer or experts must certify by their *visa* [*visto*] the regularity of the inventory, and of the changes in it referred to above, in the successive surveys of the ships made in conformity with the maritime law.

Before leaving a port in which the captain has reported casualties [*sinistri*] previously sustained, and which have caused loss or damage to the articles contained in the inven-

tory, the captain must show, by the *visa* [*visto*] of the maritime or consular authority, that he has replaced [*surrogato*] the lost or damaged articles with which the vessel was supplied with others.

With regard to vessels which, in conformity with the laws above mentioned, are not bound to be surveyed, a survey for verification of the inventory [*inventario*] must be made every two years.

73. The captain's report in the case for which provision is made by Art. 517 of the Commercial Code, if not made in writing, is taken by means of a deposition [*processo verbale*] by the president, or by a judge appointed [*giudice delegato*] for the purpose, or by the prætor whose business it is, assisted by the registrar [*cancelliere*]. The same authority must state in the log that he has received the report.

The order [*decreto*] fixing the day on which the report must be verified, is written in the margin (of the report), and both the notices [*avvisi*] which are to be posted up, and the report [*relazione*] of the officer [*usciere*] of the court that they have been posted up, are made on unstamped paper [*carta libera*] and without any fee to the official [*diritti d'usciere*].

It is the business of the registrar [*cancelliere*] to notify the appointed day to the marine office, which is bound to forward in all cases to the judicial authority which has received the report all the documents mentioned in the 2nd and 4th clauses of Art. 115 of the Mercantile Marine Code.

74. The agreement [*accordo*] between the owners or charterers [*armatori*] of a ship and the captain as to the composition of the crew and the pay of the persons who comprise it, provided for in Art. 499 of the Commercial Code, may be made by both parties agreeing on the ship's articles [*contratto d'arruolamento*]; but if the captain does not desire to avail himself of the powers which are given him, and the crew are shipped by the owners or charterers, they have authority to sign the contract.

Where several ships belong to the same persons, if the persons who are engaged undertake to serve during the term of their engagement upon such of the ships belonging to the same owners or charterers as they may be in succession

appointed to, and for the various voyages which the vessel or vessels may undertake, such engagement may be made in a single contract.

75. In the case for which provision is made in the last clause of Art. 522 of the Code of Commerce, the muster roll [*ruolo dell' equipaggio*] made out in accordance with the dispositions of Art. 325 of the order [*regolamento*] for putting the Mercantile Marine Code in force, has the same legal effect as the shipping articles [*contratto d'arruolamento*].

76. In applying Art. 676 of the Commercial Code, the endorsee [*giratario*], or the transferee [*cessionario*] of a claim against a ship or a person subrogated [*surrogata*] (to them) or a person to whom a claim against the ship is pledged [*creditore con pegno di un credito*], which claim is registered [*trascritto*] in the Marine Register, and noted [*annotato*] on the ship's register, has a right to require that the endorsement [*girata*], transfer [*cessione*], or subrogation [*surrogazione*], or pledging [*costituzione in pegno*] be noted wherever the vessel may be, provided he produces his title in legal form [*titolo in forma autentica*] to the maritime or consular authority of the place, and that the ship's register is also produced.

The maritime authority enters [*trascrive*] the document [*atto*] of title in its register, notes it in the ship's register, and forwards an office copy [*copia autentica*] to the maritime officer of the place where the ship is registered. The latter must at once note it on the margin of the register of the debt [*trascrizione del credito*] and on the entry [*matricola*] of the ship's register.

MERCANTILE MARINE CODE.

PART I.

Administrative Provisions.

TITLE I.

Mercantile Marine Administration.

CHAPTER I.

The Administrative Jurisdiction of the Mercantile Marine.

ART. 1. The administration of the mercantile marine is attached to the Ministry of Marine, and includes everything attributed to it by this Code, or which is or may hereafter be assigned to it by law.

The Mercantile Marine Code is a law governing all maritime affairs, and consequently overrules all special laws regulating the mercantile marine, C.C., Florence, 22, 4, 82, Annali, xvi. 1, 59.

2. The coast of the kingdom is divided into maritime departments, and these are subdivided into districts [*circondari*]. The numbers of the departments and districts, and the limits and capitals of the same, are determined by the table annexed to the Code.

The table is not given here. There are twenty-three districts in the mainland and islands, with the more important ports as chief towns and giving the name to each.

3. The administrative and technical service of the mercantile marine is performed by a branch of the Civil Service, called the Captaincy of Ports, and is composed of:—

The captains of the ports;

The port officers;

Those who seek to become such.

One quarter of the appointments of port officers are reserved for officers of the Royal Navy.

The number, promotion, and pay of the aforesaid persons is settled by law.

4. A captain of the port will reside in every capital of a department.

A port officer will reside in every capital of a district, except where it is also the capital of a department.

In all other places of any considerable maritime importance, a port officer, subordinate to the one at the capital of the district, shall reside.

5. In places which are not the seat of any maritime authority the service of the mercantile marine will be entrusted to some Government official performing similar duties, or to a private individual, with the title of port delegate, and at the rate of pay per annum established by order.

This is not to exceed 800 lires (say £30 per annum).

6. The employees in the service of the captain of the port above the grade of applicant are appointed by the King, on the nomination of the Minister of Marine.

7. The mercantile marine offices, which are called offices of the port, are provided with servants, water police and seamen, in accordance with the regulations.

8. Water police and seamen of the port are appointed in the manner and on the conditions laid down by the regulations.

9. Duties connected with the mercantile marine in foreign countries are entrusted to the consuls and consular agents of the kingdom.

Chapter II.

The Persons Employed in the Captain of the Port's Office.

10. The captains of the ports are entrusted with the executive duties of the administration of the mercantile marine, and of the ports, landing places, roadsteads, shores, wharves, moles and hards which are situated in their respective departments, as well as the cuts and canals which belong thereto. The port officers exercise in their respective districts such administrative functions as are not reserved by law to the captains of the ports.

11. Captains of ports exercise the functions of public officials in respect of the business entrusted to them by this Code. Their acts are deemed to be public acts as regards civil and criminal proceedings.

These provisions apply to the acts of port officers who preside over districts and perform the functions of captains of ports.

12. Port delegates perform the duties to which they are appointed by order within their districts.

13. The captains and officers of the port perform the judicial police functions entrusted to them by this Code, and in exercising such functions may themselves demand the assistance of the ordinary police.

14. Port captains of a district where the capital of the department is situated, and port officers in their respective districts, decide disputes not exceeding the value of 400 *lire* (or £16) in the following cases:—

(*a*) Damages sustained by collision between vessels in anchoring or shifting berth, or in the execution of any other manœuvre, within the harbours, basins and cuts of the district.

(*b*) Compensation, pay and reward due for salvage to a ship in peril or wrecked.

(*c*) Wages and dues payable to local pilots, tugs, watermen and for ballasting, as also for the hire or rent of careening hulks, caulking stages, hanging stages, and generally of requisites for heaving down, sheathing, repairing, masting and unmasting ships.

(*d*) Wages, provisions, and generally the fulfilment of shipping articles between captains, officers and crews.

15. Captains and officers of a port in the above disputes proceed without judicial formalities, on hearing the parties, or even in the absence of those who do not appear when they have been duly summoned.

In every case they must make a report, in accordance with which the regular decree which has effect as a judgment will be drawn up.

Against the decree no defence can be raised or appeal allowed.

16. In questions where the amount exceeds 400 *lire* the captain and port officers should act as arbitrators to bring the parties to an amicable settlement, and, when they do not succeed, draw up a report, which with their evidence as experts as to facts, and their opinion of the case, they forward to the competent judicial authority

This must be held at the place where the contract was made; no other court has jurisdiction. A ship arrested by any court can only be released by the same court, C.A., Catania, 7 R.I.D.M. 459.

TITLE II.

The Sea Service.

CHAPTER I.

Seamen.

17. The class denominated "seamen" [*gente di mare*] includes all persons who, from the nature of the sea service, are subject to the disciplinary regulations laid down in this Code.

18. "Seamen" are divided into two categories, those who are actually sea-going persons and those who practise maritime arts and industries.

The first category includes:—

(*a*) Captains and skippers [*padroni*].

See note to Art. 58 (*post*).

(*b*) Sailors and ship's boys.

(*c*) Engineers, firemen, and other persons employed under any name in the working of steam engines, on board sea-going vessels.

(*d*) Fishermen employed in sea-fishing, or in foreign fisheries.

The second category includes:—

(*a*) Shipwrights.

(*b*) Master carpenters and caulkers.

(*c*) Local pilots.

(*d*) Watermen, coast fishermen, and supernumeraries in sea-going and foreign fishing vessels.

"Seamen" [*gente di mare*] include persons engaged in and about bathing establishments on the sea-shore, C.C., Turin, 29, 1, 85, Giur. Pen., 1885, 79.

19. Seamen of the first category are registered in proper lists.

Every person so registered is furnished with a certificate on which the registration is noted.

20. The following conditions are required for a person to be registered on the list of seamen of the first category:—

(*a*) That he is a citizen of the State.

(*b*) That he is at least ten years old.

(*c*) That he has been vaccinated or had small-pox.

(*d*.) That if less than eighteen years old he has the consent of the persons who have parental authority or guardianship over him.

(*e*) That he is domiciled in some commume of the realm.

(*f*) That he shows that immediately after registration he will ship on board a national vessel.

21. A person who is registered will, after having completed twenty-four months actually at sea, being eighteen years of age, be passed into the class of sailors (*i.e.*, A.B.'s).

Seamen of the second category will be registered in separate lists in manner to be determined by regulations.

In England, four years' service at sea is required for the rating of A.B., M.S.A., 1894, § 126.

22. Persons who, on account of age, are not allowed by the law for recruiting the army to leave the country, except on certain special conditions, cannot be registered unless they prove that they have complied with those conditions.

24. Persons of the seaman class who wish to change the domicile under which they are registered must make a declaration at the office of the captain of the port at which they are registered, or at one of the dependent offices. A change of domicile does not necessitate the transfer of the registration to the list of another department unless the person who is registered requires it.

Chapter II.

Shipbuilders, and Shipbuilding Yards.

25. No one can build vessels of more than fifty tons unless provided with a licence which qualifies him as a naval engineer or shipbuilder.

26. Naval engineers may build vessels of any burden, and they alone are allowed to build iron vessels.

27. Shipbuilders are of two classes :—

Shipbuilders of the first class may build vessels of any burden.

Shipbuilders of the second class may not build vessels of more than 300 tons.

28. The following conditions are needed to obtain licences as engineers and shipbuilders :—

(*a*) To be of full age.

(*b*) To have never been condemned to a criminal punishment for any offence, nor to a correctional punishment for theft, cheating, embezzlement, or fraud, receiving stolen goods, or assisting in their sale, or for offences against public morals, unless subsequently reinstated. The two classes of offences nearly correspond to felony and misdemeanour in English Law.

(*c*) To have passed a technical examination in accordance with the programme laid down for each grade or class.

29. Licences as naval engineer or shipbuilder are granted in the name of the King by the Minister of Marine.

30. Foreign shipbuilders, when provided with licences from their own Government, may be authorised by the Minister of Marine to carry on work within the kingdom.

31. Shipbuilders, before beginning to build a ship, must make a declaration at the district port office, stating whether it is to be built on their own account or on that of another person. In the latter case, they must produce the contract relating to it, whether arising out of public deeds or private agreements, authenticated by a notary or judicially; otherwise the ship will be deemed to be built on the builder's own account. If the owner or ship's husband supplies the materials, and the shipbuilder is limited to the supply of labour, without any special agreement in writing, the declaration will be made by the owner or ship's husband in the presence of the builder.

This provision is important, as, if the vessel is built for another person, the builder has a privileged claim on the ship itself for the purchase money (see Code of Commerce, Art. 675 (12) *ante*).

32. The shipbuilder cannot make an alteration in the ship without the consent of the owner.

Before carrying out any alteration, notice must be given at the port office, and the conditions of Art. 43 be complied with.

33. A person who, after having given an order for a ship to be built, intends to take another person into co-ownership, must make a declaration at the port office of the new partner, by public deed or document, authenticated by a notary or judicially, before demanding the ship's register. Similarly, a

person who has undertaken to build a ship on his own account and who proposes to take some one else into partnership in the ownership of the vessel which is being built, must make a declaration at the time and in the manner above stated. Failing the above declarations, the vessel will remain the property of the person ordering it or building it respectively.

34. Master carpenters may build vessels of less than fifty tons burden, and must conform to the regulations of Arts. 31, 32 and 33.

35. Concessions of portions of the shore for use as shipbuilding yards may be granted to shipbuilders and naval engineering companies, for a period not exceeding thirty years, in the manner and form which is laid down in the regulations.

For the purposes of this article master shipwrights are included in the term shipbuilders.

Extended to thirty years by Act of 11th April, 1886, Art. 1.

Chapter III.

Ship's Papers to Prove Nationality.

36. The ship's papers with which national (*i.e.*, Italian) ships must be provided are :—

The register [*atto di nazionalità*] and the shipping articles [*ruolo di equippaggio*].

R. 144, 185.

37. The register states the name of the ship, its description, its burden, and its owners or part-owners, with the share in which each of them is interested. On the same document is entered the licence which allows the vessel to be sailed.

R. 143.

38. The registers are issued by the Minister of Marine in the name of the King, according to the prescribed form.

39. No vessel is deemed to be national (Italian), nor entitled to fly the national flag unless furnished with a register. Boats and small craft used in the coast fisheries of the realm, or intended for harbour and shore work, are exempted from the obligation of having a register.

Moreover, boats fitted out to be always used in coast

fisheries abroad within certain specified limits, may be exempted by order of the Minister of Marine.

Every vessel which is furnished with a register must have her name and the maritime department to which she belongs painted on her stern.

R. 139.

This is no doubt intended to cover the coral fishing boats on the coast of Africa opposite Italy. The fisheries on the Banks of Newfoundland are hardly coast fisheries, M.S.A., 1894, §§ 2, 3, and not frequented by Italian vessels.

A steamboat used exclusively in river and lake navigation is not in a strict sense a ship and need not have a register, C.A., Venice, 26, 6, 79, Temi V., 1879, 360, this applies to the steam launches now replacing the old Venetian gondolas.

40. To obtain a register, a ship must belong to citizens of the State or to foreigners who have become domiciled or resident five years at least.

Nevertheless, foreigners, not domiciled nor resident in the State, may have shares in the ownership of a national vessel up to one-third part.

For the purposes of the present article a company, whether under the name of a firm [*in nome collettivo*], or with limited liability [*in accomandita*], even when its offices are situated abroad, is considered as national if any one of the partners, who is liable for the whole [*socio solidale*], and who gives it its name is a citizen of the State.

A company of such a nature, which is composed of foreigners, but is established or has its principal officer within the realm, is treated as a foreigner domiciled in the realm. A joint stock company [*società anonima*] is considered to be national if its principal office is within the kingdom, and its general meetings are held there.

The agencies of foreign companies which are authorised by the Government to carry on business within the realm, are treated as foreigners domiciled or resident in the realm, provided always that they have an agent furnished with full powers [*mandato generale*] to bind the company.

R. 138.

Cf. Mer. Ship. Act, 1894, § 1, 9.

41. Foreigners who are neither domiciled nor have been

resident for five years in the State, and who by any means acquire the ownership of more than one-third in an Italian ship, must within one year transfer the excess to some person who is qualified by the Code.

Whensoever, in consequence of a change of nationality or any other reason, a part-owner of a vessel loses his Italian citizenship, he must make a declaration at the port captain's office, and if he is not within the provisions of the first part of the preceding article, 40, he must within a year make over to an Italian the excess over the one-third part which a foreigner is permitted to hold.

The said duty is imposed in all cases on a native woman who marries a foreigner and abandons the State.

After the lapse of a year, if the foreigner, or a woman who has married a foreigner, in the case above mentioned, has not effected the transfer of that portion of the vessel which such persons are not allowed to hold, the captain of the port of the department in which the ship is registered proceeds to sell judicially the above-mentioned portion.

He deducts the expenses of the sale from the price, and pays the balance into court for the account of whom it may concern.

R. 149.

Cf. Mer. Ship. Act, 1894, § 28.

42. No ship which is sold by the subject of a State at war with a State which is at peace with the King's Government can obtain Italian nationality (in the ordinary way).

But the Minister of Marine, if satisfied of the *bona fides* of the sale, may grant such nationalisation.

43. To obtain a register the ship must be measured in the manner and form laid down by regulations.

44. The statement of part-ownership in a vessel must be made by shares (*Carato*) or fractions of shares.

Carato = "A term used in the Mediterranean to express the $\frac{1}{24}$th part of a vessel."—Laugierri's *Nautical Dict.* (It.-Eng.).

In England the division is into $\frac{1}{64}$ shares (Mer. Ship. Act, 1894, § 5.

Italy has adopted the measurement used in England under the Mer. Ship. Act, 1894, §§ 77, 78, and Sc. ii., since 1st July, 1873 (see Order in Council, 30th September, 1873, and Royal Decrees, 11th March 1873 and 30th July, 1882).

45. All national ships must be entered in the proper registers.

R. 140.

M.S.A., 1894, § 2.

46. The ship will be entered on the register of the maritime department where the owner is domiciled. Where there are several owners, the registration will be in the department in which those who have the greatest interest in the ship, or the ship's husband or manager, mentioned in Art. 53, are domiciled.

R. 141.

This article is held to make a vessel so far a part of the territory of the department in which she is inscribed that her crew are amenable to the criminal jurisdiction of that department, and not to that of their personal domicile (*Simili*, C.C., Turin, 14, 4, 1870, J.D.I.P., 1879, 551).

47. The ship's register is valid as long as the ship exists, unless there is an alteration in her description (rig) or construction.

M.S.A., 1894, § 48.

48. Transfers of the property in a ship must be announced to the port officers in the manner and time laid down in the regulations :—

(1.) When a port officer is aware that in consequence of a death, marriage, change of nationality of the owner, judicial proceedings, or legal abandonment, a ship has passed entirely into the possession of a foreigner who is not entitled to be the owner of an Italian vessel, or a person who, having once possessed the necessary qualifications, has lost them, he publishes in the newspaper which contains judicial announcements an advertisement giving notice to all creditors who are interested in the ship, that after the lapse of three months, if there be no opposition, he will issue a certificate that the vessel ceases to be entitled to carry the national flag, and will cancel the ship's registration.

If there be any opposition, or if mortgages or bottomry loans, not payable on the ship's arrival, are found registered upon the ship, the port official

will refuse this certificate, and, after the lapse of a year from the day on which the transfer of ownership or the change of the owner's nationality occurred, will proceed officially to sell the vessel in conformity with Art. 41.

(2.) Except in the case where the sale is judicial, no Italian ship can be sold to a foreigner who does not possess the qualifications for being owner of an Italian ship, unless permission for the ship to cease to fly the Italian flag has been obtained from the maritime authority, if within the realm, and from the consular authority, if abroad, and after the return and withdrawal of the ship's papers and log-books.

If contracts of mortgage or bottomry are found registered on the ship's register, or if opposition is raised to the sale on the part of privileged creditors, the maritime or consular authority will refuse leave to cease to sail under the Italian flag, and the sale, however made, if made without such leave, will be null and void.

Previously to giving leave to cease to sail under the Italian flag, the maritime or consular authority must require deposit of a sum sufficient to meet the wages of the crew, their maintenance, and the expenses of sending them home.

F. [1885] 33, Sc. 273, M.S.A., 1894, §§ 21, 28, 186

49. The owner or ship's husband cannot, except in the case provided for in Art. 175, proceed to break up a ship without making a declaration to the maritime authority if the vessel is within the realm, and to the consular authority if she is abroad. In either case, the person making the declaration must deliver to the authority mentioned the log book and ship's papers.

If there are debts registered against the ship, or claims of privileged creditors, the maritime or consular authority will prevent the breaking up (of the ship), and appoint an official watchman for the ship, so as to provide that at the instance of a diligent party justice may be done by the judicial authority.

50. A ship which has not been heard of for two years shall be cancelled out of the register.

51. The muster rolls with which every ship must be provided are made out by the captains and officers of the ports in the form laid down in the regulations.

M.S.A., 1894, § 114.

CHAPTER IV.

Of Shipowners and Ship's Husbands [Armatori].

"Armatori." This word, which appears in slightly altered forms in the modern maritime Latin languages, cannot well be translated by one English word. It means those persons, be they owners, part-owners, or hirers of ships, or those employed by them, who have the general management of ships, and the old English maritime word ship's husband seems that which is most nearly equivalent. Where, however, the context has required the use of the word charterer, it has been used. In German the corresponding word is "verfrachter". See German Code 1900, Art. 559.

52. A ship's husband who undertakes the management of a ship for one or more voyages or expeditions must supply her with such things as are necessary, and entrust her to the command of a captain or skipper, whether he is himself the owner of the vessel or not.

He is responsible for the food being in good condition and for injury to a seaman caused by its bad condition for which he cannot free himself by abandoning the ship, 22, 2, 99; C.A., Genoa, 15 R.I.D.M. 249; *cf.* M.S.A. 1894, §§ 457, 458.

53. Before a ship is fitted out, the owners must make a declaration as to who is the ship's husband before the captain or officer of the port if within the realm, or before the consular officer if abroad, or they must produce a document to prove his appointment by the persons whom he represents.

Failing such declaration and proof, the owner who has more than one half of the interest in the ship will be deemed to be the ship's husband, or if no person owns more than one half of the ship, all the co-owners are deemed to be ship's husbands.

When persons are declared to be ship's husbands for one expedition or voyage, they are deemed to be so in succeeding expeditions unless a declaration is made to the contrary.

When a father owns shares in a ship in his own right and others as guardian or trustee for his son, a minor, the total exceeding one half of the vessel, he cannot combine them for the purpose of claiming to be manager under this rule, C. C., Turin, 1 R.I.D.M. 408.

As between bare owners of a ship and persons having the use and

control of it, the latter are those who select the manager or ship's husband, C.A. Genoa, 15, 7, 83, Eco. Giur. 1883, 314.

S. 586, 587, 594, 596, M.S.A., 1894, § 59.

54. When neither the owner nor the ship's husband is domiciled in the department in which the vessel is or should be registered, or when there are several co-owners of the same ship, or several ship's husbands, or when the ship's husband is the captain himself, the owners or ship's husbands may appoint a person who is domiciled in the department in which the vessel is registered, for the purpose of representing them before the maritime authority. Owners and ship's husbands may also be represented for all legal purposes in the chancery (registry) of the royal consuls abroad in the case provided for by Art. 61 and the clauses of Art. 102.

55. Owners and ship's husbands are answerable to the State for fines incurred by the captain or master in the exercise of his office.

This includes fines for smuggling, C.C., Rome, 11, 10, 87. C. Suprema, 1887, 727.

Cf. Code of Commerce. 491, 496 (*ante*).

56. Owners and ship's husbands are also severally liable for the payment of taxes and other maritime dues, for the repayment and payment, and for the retention of the pay due to the Mercantile Marine Sick Fund for the expenses of maintaining and sending home persons belonging to the ship's company, and for all disbursements made for these purposes by the agents of the Government where such expenses are chargeable to the ship.

The liability to repay expenses of maintenance, and of sending home members of the ship's company, ceases in the case of shipwreck and abandonment of the ship, but such repayment is a charge on articles salved, and on their proceeds, with priority in the terms of Art. 133.

Captains of ports may issue injunctions for the repayment of the expenses mentioned in this article, which will be made executory by the civil tribunal, saving an appeal to the said tribunal within twelve days, and after payment into court of the sum, which the appellant proves by attaching the receipt to the appeal, without which the appeal will not be allowed.

See Code of Commerce, 534-542 (*ante*).

It appears that there is no claim against the owner beyond the value of property salved, C.A., Genoa, 11, 2, 81. Eco. Giur. V., 137, but up to that value he is liable whether he abandons or not.

CHAPTER V.

Of Captains and Masters.

57. No one can command a merchant ship under the national flag unless he is a certificated captain or skipper, or otherwise authorised in the terms of this Code.

[Persons of full age who are owners of sailing or steam vessels used exclusively for pleasure navigation (yachting) and enrolled in a club established for this purpose, and recognised by the Minister of Marine, may command them in person for such voyages as they please without being obliged to carry any of the officers mentioned in Art. 66 of the Mercantile Marine Code.]

The clause in brackets was added in April, 1886. See note to Art. 201 (*post*). M.S.A., 1894, §§ 92, 93.

58. Captains are divided into two classes, that is captain for ocean (long) voyages, and captain for coasting voyages. There is only one class of skippers.

To assimilate as far as possible these several grades to their English equivalents, *Capitani di lungo corso* is hereafter translated as captain or commander, the usual title of courtesy to the person in command of our large ocean-going vessels; *Capitani di gran cabotaggio*, a grade (see next article) equivalent to the person in command of coasting or home-trade vessels as master; and *padroni*, a grade nearly equivalent to our fishing-boat masters, by the word which is now good parliamentary English, *i.e.*, skipper (see M.S.A., 1894, pt. iv. *passim*).

59. Captains for ocean voyages (commanders) may command vessels for any destination; captains for coasting voyages (masters) may command vessels in the Mediterranean, Black Sea, Sea of Azoff, and outside the Straits of Gibraltar, on the ocean coasts of Spain, Portugal, France, and the British Isles; in the North Sea, in the Baltic, and on the West Coast of Africa, as far as Senegal, including the islands which are not more than 300 miles from the whole of the said coasts; through the Suez Canal they may navigate,

the Red Sea, the Persian Gulf, and the Indian coast as far as Bombay and the adjacent islands.

Skippers (*padroni*) may command vessels in the whole of the Mediterranean.

See note to Art. 58 (*ante*).

60. Native seamen, who are twenty-one years of age and have been four years at sea, who can read and write, and who know the compass, and have not been sentenced to a criminal punishment for any offence, nor to a correctional punishment for theft, cheating, embezzlement, or fraud, receiving stolen goods, or assisting in their sale, or for offences against public morals, or who have obtained pardon, may be authorised, in the form and within the limits laid down in the regulations, to command craft not exceeding fifty tons burden, for short coasting voyages.

No qualification is required by law for the person in command of a British home-trade ship not carrying passengers, M.S.A. 1894, §§ 92, 93.

61. Masters and skippers when in places beyond the limits within which they are permitted to navigate, may be authorised by the royal consul to command ships under the national flag for trade in the channels and over the whole extent of the rivers, and along the sea coast within a radius of 300 sea miles from the port in which they are fitted out.

See note to Art. 58 (*ante*).

62. The following conditions must be complied with to obtain a certificate as captain or skipper :—

(*a*) To be a citizen of the State.

(*b*) Not to have been condemned to a criminal punishment for any offence, nor to a correctional punishment for theft, cheating, embezzlement, or fraud, receiving stolen goods, or assisting in their sale, or for offences against public morality, or to have obtained a pardon.

(*c*) To have passed a technical examination according to the established programme. Furthermore, it is necessary for a skipper to have completed his twenty-second year, and to have been three years actually at sea, of which one year at least must

have been in voyages of the class in which the applicant seeks to command.

For masters, twenty-two years of age and four years at sea, of which at least half must have been in a national (Italian) ship [*and one whole year as mate or second mate*].

For captains, twenty-four years of age and four years at sea, of which at least half must have been in a national (Italian) ship, and one whole year in voyages outside the Mediterranean [*and an equal time as mate or master of a coaster*].

The examination, on passing which certificates for the several steps are confirmed, cannot be attempted before the candidate has completed the age and sea service that are required for the rank which he desires to obtain.

The words in brackets are expunged by Act of April, 1886.

See note to Art. 58 (*ante*).

In England a master must be twenty-one years old, and have served one year as mate.

S. 609.

63. Captains and skippers who have been naturalised cannot exchange their certificates (*i.e.*, those of other States), unless they comply with the conditions prescribed for the rank which they desire to obtain. Nevertheless, the Minister of Marine may, under certain circumstances, dispense with the examination when the consent of the Admiralty Council has been previously obtained.

64. Naval officers, naval artificers, and naval engineers and assistant engineers, and chief and assistant quartermasters, (petty officers) who have completed their service in the Royal Navy, may obtain certificates of the following ranks in the mercantile marine: Naval officers, that of captain for ocean voyages (with the denomination of extra captain, as laid down in the next article); officers of the technical branches of the Navy, that of naval artificers; engineer officers or chief engineers, that of first-class engineers; second or assistant engineers, that of second-class engineers; chief quartermaster, that of master; and assistant quartermaster, that of skipper. Such licences will be conferred on compliance with the conditions

established by Arts. 28, 62 and 69 respectively, with the exception of that of examination.

Captains' certificates are granted in the name of the King by the Minister of Marine, and those of skippers by the captain of the port of the department to which the candidate belongs.

Captains for ocean voyages who wish to prove the completeness of their studies and the greater knowledge they have acquired, will be admitted to a voluntary examination, in conformity with a programme specially arranged. If they pass it, they will obtain from the Minister of Marine a special licence under the denomination of extra captain for ocean voyages.

See note to Art. 58 (*ante*).

In England commissioned officers of the executive branch and engineers are entitled to certificates of *service*, entitling them to command and act as engineers of merchant vessels (Mer. Ship. Act, 1894, § 99).

In England there is a voluntary examination for the certificate of "extra master".

CHAPTER VI.

Ship's Officers and Crews.

ART. 66. In the composition of the ship's crews the following are considered as ship's officers, subordinate to the captain :—

(1.) The second captain (chief officer).
(2.) The mate [*scrivano*].
(3.) [The second mate [*sotto scrivano*].]
(4.) The ship's doctor.
(5.) The first engineer, in steamships.
(6.) The second engineer.

The following are considered petty officers, subordinate to the captain and ship's officers :—

(1.) The boatswain or boatswains (mates), who superintend the rigging, and look after the fittings of the ship.
(2.) The local pilot, for the whole time that he has charge of the ship's course.
(3.) The carpenter, so far as concerns the results of an abandonment of the ship.

The words in brackets (3) of ship's officers are expunged, April, 1886. From this and Art. 107 (*post*), it would appear that the English

law of compulsory pilotage cannot exist in Italy, but that the position of a pilot there is similar to the position of a pilot in the Suez Canal (The *Guy Mannering*, 7 P.D. 132), in France (The *Augusta*, 6 Asp. M.L.C. 58 161), and in the Danube (The *Agnes Otto*, 12 P.D. 56), see also Arts. 200, 201 (*post*) and notes thereto.

67. The following conditions are necessary to qualify for mate :—

(*a*) To have completed twenty years of age.

(*b*) To have been thirty months at sea, of which one-half must have been in national (Italian) vessels.

(*c*) To have passed a technical examination in accordance with the established regulations.

(*d*) Not to have been sentenced to a criminal punishment for any offence, or even to a correctional punishment for theft, cheating, embezzlement or fraud, receiving or assisting the sale of stolen goods, or of an offence against public order, unless subsequently pardoned.

Certificates of competency to sail as mate are given by the captain of the port of the department to which the applicant belongs.

The disqualifying offences nearly correspond to "felony" and "mis. demeanour" respectively.

In England, a mate must be nineteen years of age, and have served at sea for five years, of which one must have been as second or only mate. An intermediate grade of "only mate" is recognised between that of "mate" and "second mate," the qualification for which is five years at sea without previous service as second mate; in both cases there is a technical examination, that for "only mate" being intermediate in easiness between those for "mate" and "second mate."

Art. 68 dealing with the qualifications of a second mate or *sotto scrivano* was expunged by Act of April 1886 (see Art. 66 (3) *ante*).

In England, a second mate must be seventeen years of age, and four years at sea, and must pass an examination.

69. The conditions under which the employment of an engineer, whether as first or second, may be exercised, are determined by the regulations, and the certificates relating thereto are given by the Minister of Marine. Steamships which are used for voyages along the continental and insular coasts of the kingdom, the Mediterranean coast of France,

the Islands of Corsica, Malta and Corfù, the coast of Tunis and the Dalmatian and Istrian coasts, must carry at least one second-class engineer if the total power of the engine is less than 100 horse power nominal, and a first-class engineer if the engine is of more power.

Steamships intended for voyages beyond the limits above mentioned must carry at least one second-class engineer, if the engine is less than 100 horse power nominal, as above stated, and two engineers, one of the first, and the other of the second-class, if the engine is of greater power.

[The management of engines not exceeding 150 indicated horse power in steam vessels employed exclusively in trading on the coasts of the realm within limits laid down in the regulations and the management of engines in steam tugs may be entrusted to one experienced person possessing the above-prescribed qualifications.]

The clause in brackets was added, April, 1886. Regulations for keeping an Engineer's Log or Register are laid down by a Royal Decree, 14th May, 1893.

In England there are two classes of engineers, first and second, and every foreign-going steamship, *i.e.*, steamer trading to ports beyond Brest and the Elbe, and every sea-going home-trade passenger steamship must have one second-class engineer, and, in the case of foreign-going steamships of 100 horse power nominal and upwards, one first- and one second-class engineer, at least (Mer. Ship. Act, 1894, § 92).

P. (1893) 28, 30.

F. (1893) 28.

70. Vessels must be commanded by either a captain, a master, or a sailor entitled to command according to the description of the voyage, saving the proviso of the final clause of Art. 57. Ships which undertake extended coasting voyages (see Art. 59 *ante*), and steam-vessels used for passenger traffic in the Mediterranean, must, besides the captain or master, carry a mate who has at least a chief mate's certificate.

Vessels which undertake ocean voyages, must, besides the captain, carry a mate, who has a captain's certificate.

Steam-vessels carrying passengers beyond the Mediterranean must in addition to the captain carry a chief officer who has a captain's certificate and a second officer who has at least a certificate of mate.

This article is altered as above by Act of April, 1886.

In England, a foreign-going ship, *i.e.*, a ship trading to places more distant than Brest and the Elbe, or home-trade passenger ship, must have a certificated master, and if over 100 tons burden, a certificated mate. Home-trade vessels not carrying passengers need have no certificated officers (see Mer. Ship. Act, 1894, § 92).

71. The minimum number of crew for each class of vessel must be in accordance with the regulations.

In fitting out a ship, the captain or skipper, and at least two-thirds of the crew must be natives (Italians).

But consular officials in foreign ports may, in accordance with the necessities of the case, permit foreign seamen to be shipped in excess of the proportion prescribed.

It is not permissible to have recourse to foreigners for captain or skipper, and mate, unless it becomes necessary from the impossibility of procuring natives (Italians).

[Failing qualified foreigners, or where the consul does not think it expedient to employ them, an Italian of a lower grade may be put in command of a ship and Italian seamen who are considered by the consul fit for the posts may be employed as first and second officers. This appointment is limited to the voyage and ceases as soon as it is possible for Italians possessing the proper qualifications to take the command and fulfil the duties of first and second officer.]

The clause in brackets was added in April, 1886.

A regulation akin to this exists in almost all civilised States except Great Britain, which country, since 1853, has allowed her ships to be entirely manned and officered by foreigners, an arrangement no doubt "cheap" in time of peace, but likely to be found "nasty" in time of war (see 12 and 13 Vict., c. 29, §§ 7, 8; 16 and 17 Vict., c. 136, § 31; 17 and 18 Vict., c. 120, now repealed).

72. No native (Italian) can be allowed to become a member of a ship's crew in the mercantile marine, unless he is entered on the list of seafaring persons or register of seamen.

Matricola, registro della genti di Mare (see Arts. 18-22).

R. 263.

In England there is no provision corresponding to this, but the Mer. Ship. Act, 1894, § 126, requires four years' service at sea for the rating of A.B.

73. The shipping articles entered into between the captain, skipper, or ship's husband and the members of the crew, must

be in writing, under pain of nullity, and be signed by each person shipped.

If a person shipped cannot write, the port officer must note the fact on the shipping articles, and have it witnessed by two independent persons who are not members of the crew.

Minors who have completed eighteen years of age are, for the purpose of shipping articles, deemed to be of age, and can sign without the intervention of parents or guardians.

Minors of less than eighteen years of age ought to be shipped by their respective parents or guardians, either by their personal intervention in (signing) the shipping articles, or by means of an authorisation lodged in the port office, which must be either a deed attested by a notary, or a free pass from the syndic of the commune.

The engagement of the youths mentioned in Art. 262 of the Civil Code must be made with the consent of the managers of the refuge shown in the manner established by the regulations.

For the corresponding regulation in Great Britain, see M.S.A., 1894, §§ 105-109, 113-130, 389, 392-404. A general permission by father or guardian is sufficient authority in the case of a youth of eighteen, C.C. Rome, 28, 6, 90, Temi G., 1890, 636.

74. The members of the crew, whilst subject to the (maritime) levy, cannot be discharged in a foreign country, even if the engagement is terminated, not even by consent of the parties.

R. 311.

75. If a member of the crew of a national (Italian) vessel be discharged or left behind in a foreign country, or in a home port [*porto dello Stato*] different from that in which he shipped, unless at the same time he was shipped on board another vessel, the expenses of sending him home are laid—

(*a*) To the charge of the ship, and paid by the captain or skipper to the consular officer or maritime authority, with the document of discharge, in all cases in which the person who is landed has been discharged by the ship's husband, captain or skipper, for any reason which is not the result of the act or will of the person engaged.

(*b*) To the charge of the ship's husband, when the discharge is the consequence of wreck, or other insuperable obstacle, and is paid out of the proceeds of the salvage, if any, of the ship and her apparel, and of the freight of goods which are salved.

(*c*) To the charge of the person discharged, if the discharge is the consequence of sickness or injury, the cure of which is by law chargeable to the person engaged.

Captains, skippers and ship's husbands, except in case of discharge for a crime, are liable to the State for expenses incurred in sending a member of the crew home, saving their claim over against the person, if valid.

See Co. Com., Arts. 535-538 (*ante*).

For somewhat similar regulations in British ships, see Mer. Ship. Act, 1894, §§ 186-194 ; and *Purves* v. *Straits of Dover*, SS. Co., C.A. (1899), 2. Q.B. 217.

76. The *viaticum*, in accordance with the preceding article, unless agreed upon between the captain or skipper and the person who is discharged, is settled by regulations.

In all other cases the arrangements for seamen returning home are made by the consular officials or maritime authority. The payment and repayment of the expenses incurred takes place in the manner laid down in the regulations.

Cf. Mer. Ship. Act, 1894, § 191.

CHAPTER VII.

Survey of Ships and Their Departure.

77. Every vessel which undertakes a voyage must be in a seaworthy condition, and be furnished with the apparel, rigging and instruments which are prescribed by regulations.

Passenger steamers, and vessels both sailing and steam, which undertake ocean voyages and coasting voyages beyond the limits of the Mediterranean, with the exception of those referred to in Arts. 61 and 149, cannot sail unless their seaworthiness is verified by the maritime authorities if within the realm, or by the consular authorities if abroad, by means of a special visit and survey, made at the expense of the owner or ship's husband, at least once annually if the vessel

is built of wood or of wood and iron combined, and biennially if the vessel is built of iron.

This official annual or bienniel survey must not be confounded with the one which a commander must have to clear himself of liability for unseaworthiness or bad stowage, Art, 502 (*ante*). C.C. Florence, 15, 5, 84, Annali, 1884, 1, 283, C.C., Rome, 13, 7, 83, Leggi, 1883, 1, 257, the latter species of survey is not now compulsory but desirable as evidence of seaworthiness in case of damage, *ibid.* It is the duty of the owner to keep his ship seaworthy, and he is responsible for injury caused to a seaman by defective appliances, and cannot free himself of liability by abandoning the ship, C.A., Genoa, 27, 2, 99, 15 R.I.D.M., 249.

In Great Britain all vessels required to be registered must be officially surveyed before registration, M.S.A., 1894, § 6; passenger, *i.e.*, emigrant ships, before going to sea, Mer. Ship. Act, 1894, § 289; and passenger steamships every year at least, Mer. Ship. Act, 1894, §§ 271, 272, and all ships must be seaworthy when they sail, M.S.A., 1894, §§ 457, 458.

78. The survey will be held by Government inspectors, or by experts named by the said authority, who will ascertain, according to rules, and by all skilled methods, whether the vessel is fit for sea, and will determine what voyages she may make, and the time at which she must be again surveyed, whenever this ought to be done before the annual or biennial survey mentioned in the preceding article.

The Minister of Marine may allow the visit and survey of a vessel made on her registration, under special arrangements, to be deemed equivalent to an official visit and survey, so far as concerns the duties of his department.

79. The report of the official survey, or the certificate of registration, shall be presented to the maritime or consular authority, and in the form and with the results laid down in the regulations.

80. The vessels to which Art. 77 relates are subject to a fresh survey whensoever, in the course of navigation, they have sustained serious damage.

When a vessel which is about to commence a voyage is near the date at which, in accordance with the preceding Arts. 77 and 78, she ought to be surveyed, the maritime or consular authority will require the fulfilment of the said form, except when the vessel is bound direct to a port at which the survey can be more conveniently held.

81. The maritime and consular authorities may order a

special survey whenever those concerned make a complaint, and must order one when the complaint is made by the majority of the crew before the ship is laden. If the result of the survey shows that the complaint of the majority of the crew was unfounded, those who made (the complaint) will be punished by disciplinary penalties.

The above-named authority, and commanders of vessels of the Royal Navy, can, at any time and place, survey or cause to be surveyed, national ships, to see if they are provided with, and maintain as they are bound to do, the equipments required by the regulations, proceeding to ascertain the deficiency, if there is any.

For a detention of the ship for survey on complaint of the crew, the Board of Trade can in Great Britain require security, and if the complaint is unfounded claim over against the persons making it all costs and damages they may have incurred in consequence of the detention (Mer. Ship. Act, 1894, § 463).

82. Every steam vessel, in addition to the survey mentioned in Art. 77, is subject to an inspection of her machinery at least once a year if she is used for the purpose of carrying goods exclusively, and every six months if used to carry passengers.

The inspection is made at the expense of the owners, and under the direction of the maritime authority within the realm, and of the consular authority abroad.

The surveyors ascertain:—

(*a*) If the boilers, engines, and their accessories are in good condition and fit for the voyage on which the ship is bound.

(*b*) The maximum weight which may be placed on the safety valve.

(*c*) The time at which the engines will require a fresh inspection, if such time is less than a year or six months, as the case may be.

The dispositions of Art. 79 are applicable also to the inspection of machinery.

British passenger steamers are surveyed once a year (Mer. Ship. Act, 1894, § 271).

83. Captains and skippers cannot obtain their ship's papers

unless they show that they have complied with the preceding article.

84. Health officers will not give certificates and health passes to coasting vessels, unless the captain or skipper of national vessels produce a muster roll bearing the *visa* of the maritime authority of the place. The above dispositions are applicable to the captains and skippers of foreign ships, whose papers must also have the *visa* of their respective consuls.

Chapter VIII.

Carriage of Passengers.

85. The carriage of passengers on sailing and steam-vessels is the subject of special inspection and watchfulness on the part of the maritime authority within the realm and of the consular authority abroad, in accordance with the rules laid down in the following articles.

86. The regulations will determine the maximum number of passengers, having regard to the class of vessel and length of voyage, and will lay down conditions for the internal arrangements of the ship, for providing and preserving the provisions, for the complement of boats and life-saving apparatus, and all other proper regulations and safeguards.

The regulations are contained in three laws, *Legge Penale sulla sanità marittima*, 31st July, 1859; and *Regolamento sul trasporto di passaggieri nei viaggi marittimi*, 11th Feb., 1859; and *Legge*, 30th Dec., 1888, No. 5866, *sull' emigrazione*.

87. Whatever be the nature of the voyage and the number of persons embarked, the sanitary authority will prohibit the embarkation of a person who is sick or recovering from a long and serious illness.

Whenever, for such a reason, a person who is embarked ought to be left on shore, he must be landed with his goods and family where required, and he shall have returned to him any advance he has paid on account of passage money.

M.S.A., 1894, §§ 307, 308.

88. The embarkation and carriage on ocean or long coasting voyages of lunatics, idiots, deaf-mutes, blind persons or cripples,

or minors under eighteen years of age, is not allowed unless they are accompanied by their parents or guardians, or some person who offers security for the assistance they need during the voyage, and for their maintenance on arrival at their place of destination.

Whilst preserving the disciplinary powers under Arts. 92 and 451, the captain may, in case a person who is embarked is guilty of seriously disorderly conduct, or vexatious demands, or acts injuriously to the crew, report the circumstance to the maritime or consular authority at the first place at which the vessel calls, and such authority can order that the person be landed. A person so landed has no claim to the restitution of passage money paid in advance.

All passengers on embarkation must give up their weapons to the captain, who will take care of them, and restore them at the time of landing.

Cf. Mer. Ship. Act, 1894, §§ 287, 288.

89. On voyages beyond the Straits of Gibraltar and the Suez Canal, when the number of persons on board, including the crew, exceeds 150, a medical man, approved by the health officer, on the nomination of the captain or ship's husband, must be shipped.

M.S.A., 1894, § 303.

90. The manner in which the maritime authority shall carry out the inspection and watching over the carriage of passengers shall be laid down by regulations.

These regulations are contained in the *Regolamento sul trasporto di passaggieri nei viaggi marittimi*, 11th Feb., 1859.

91. The preceding arrangements are applicable to foreign vessels embarking passengers within the realm, and such vessels will also be subject to special inspection, if required, on previous notice being given to the respective consular agencies.

To secure the execution of their duties and undertakings, captains of foreign ships must give bail in the manner and for the amount determined by the regulations.

Cf. M.S.A., 1894, §§ 309, 310. In a foreign emigrant ship where one-half of the passengers are British subjects and the captain and officers do

not speak English intelligibly, interpreters have to be carried, M.S.A., 1894, § 304 (4).

This bail cannot be made use of for any other purpose than that for which it is given, *i.e.*, to cover emigrants' expenses, 2, 7, 97, C.A., Naples, 13 R.I.D.M., 435.

CHAPTER IX.

Discipline on Board.

92. Captains and skippers must preserve order and discipline on their own ships, and all persons who are embarked, in whatever capacity, must pay them due respect and obedience in everything relating to good order on board, the safety of the ship, the care of the cargo, and the success of the voyage.

To this end captains and skippers may exercise the disciplinary power granted to them by Art. 450, and those following it. In no case, except that of the exigency of the service on board, can a captain or skipper hinder his ship's crew from going before the maritime or consular authority to present complaints.

Cf. Mer. Ship. Act, 1894, §§ 211, 220-238, 287, 288, 325, 326.

93. If a crime or misdemeanour is committed on board a ship in the course of a voyage the captain or skipper must proceed in accordance with Art. 436. In case of a death happening on board the captain or skipper will proceed in the way laid down by the article following it, *viz.*, 437.

Sc. 47.

Cf. Mer. Ship. Act, 1894, §§ 686, 687.

94. If in the course of a voyage the supply of water or provisions runs short, or goes bad, the captain or skipper must take all possible steps to provide for the necessities of the persons on board.

To this end he must procure the necessary supplies from ships he falls in with, or make for the nearest port, even when to do so it is necessary to deviate from his course.

95. If the crew do not receive the full rations stipulated for before sailing, or, if there has been no agreement on the subject, that required by the regulations, whilst there are sufficient provisions on board, or if they have run short or been altered, it

being possible to get fresh supplies, compensation is due to the crew without prejudice to the penalties incurred by the captain.

If the short allowance is rendered necessary by unavoidable circumstances there is due to the sailor the actual value in money (of the provisions he has not had). The unavoidable circumstances must be stated formally in the log, and signed by the officers of the ship.

R. 295.

Cf. Mer. Ship. Act, 1894, § 199.

The ship's account book in which this entry should be made (see Co. Com., Art. 500, *ante*) must not be taken away by a commander when he leaves the ship, C.A., Genoa, 30, 12, 88, Temi G., 1889, 20.

96. Members of the crew, not less than a third in number, may bring a complaint of the quality, or insufficient quantity, of the provisions before the maritime authority within the realm, and before the consular authority abroad, and, failing them, before the commander of a King's ship, and, failing him, before the local authority.

A similar complaint may be made by any passenger.

The authority indicated above, having first ascertained the true state of things, will, if the case is proved, order the captain or skipper at once to provide what is needed, and if he does not obey, will provide it officially by borrowing the necessary sum on bottomry on the hull and rigging of the ship, and subsidiarily by selling or pledging goods to the required amount.

R. 284.

Cf. M.S.A., 1894, § 198. As to passengers (emigrants), the provisions and water are surveyed before the vessel leaves, M.S.A., 1894, § 295.

97. If the clandestine shipment of firearms, side-arms [*armi bianche*], powder, or combustible goods, be proved, such articles will be sequestrated by the captain or skipper, and may be destroyed by him or secured in his own cabin, to be confiscated at the termination of the voyage.

The author of the clandestine shipment will besides be punished by fine up to 200 *lire*.

Cf. Mer. Ship. Act, 1894, §§ 301, 302, 446-450.

98. Captains and skippers are responsible for effects and money left by persons who die on board.

They must make out an inventory of them for the purpose of accounting for them to the maritime authority within the realm, and to the consular officials abroad, in the way laid down by the regulations.

Cf. Mer. Ship. Act, 1894, §§ 169-181.

99. The effects mentioned in the last article may, if there is a risk of their deteriorating, or for any good reason, be sold by the port officials or by the consular officials abroad.

They may even be destroyed by the captain or skipper, a proper statement of the case being signed by the ship's officers and entered in the log, when the preservation of the above-mentioned articles may be injurious to ship's health.

Cf. Mer. Ship. Act, 1894, §§ 169, 170, and see Co. Com., Art. 500 and M.M.C. Art. 95 (*ante*).

100. When the effects referred to in the two preceding articles are not claimed by a person having a right to them within a year from the day of notice, given in the form laid down by the regulations, they will be sold by auction.

The proceeds, together with the money left by the deceased, less expenses, will be deposited in the bank [*Cassa dei Depositi*] and carried to the account of the person to whom it belongs.

See Art. 151 (*post*).

Cf. Mer. Ship. Act, 1894, § 179, gives six years for claims to be brought in.

CHAPTER X.

Regulations for Navigation.

101. Vessels of the mercantile marine will hoist the national flag of the pattern and in the cases laid down in the regulations. Whilst on a voyage they must have on board the maritime documents mentioned in Arts. 36, 102, and 144, the certificates of the surveys prescribed by Arts. 77, 78, 79, 82 and 85, and the certificate of measurement.

[These regulations, with the exception of Arts. 36 and 102, do not apply to vessels used exclusively as yachts which are also exonerated from the obligation to keep a nautical journal as prescribed in Art. 500 of the Code of Commerce.]

The clause in brackets was added April, 1886.

Cf. Mer. Ship. Act, 1894, §§ 15, 73, 74, 120, 239.

102. If in consequence of accident, or other unavoidable circumstance, the ship's papers are lost on a voyage, the captain or skipper must state the fact in the first port at which he touches, at the port office or to the royal consular official. If the port touched at is in a foreign country, the consular official will provide provisional papers to enable him to continue the voyage.

Ships built or bought abroad are also supplied with provisional registers and muster rolls to nationalise them.

Cf. Mer. Ship. Act, 1894, §§ 18, 22.

103. Ships of war belonging to the State exercise the police surveillance over national ships both on the high seas and in foreign countries where there is no consular agent, or on his request. For this purpose the commanders of the said ships may proceed to a survey of a ship, to an inspection of her papers, to hear complaints raised between the captain and persons on board, and commit offenders.

Ships which do not possess any of the prescribed papers, or which have false papers, will be taken into a port belonging to the State, or into the nearest foreign port in which a royal consular official is resident.

Cf. Mer. Ship. Act, 1894, §§ 480-486.

104. Any ship of war belonging to the State, though not employed as a cruiser, which falls in with a national vessel in any sea, which being found under the conditions contemplated by Arts. 341 and 342 of this Code is suspected of being engaged in the slave trade, is authorised to capture the same and carry her into a port within the realm, or into the nearest foreign port in which a royal consular official is resident.

105. Captains and skippers who fall in with men-of-war belonging to the State at sea, or find them in foreign ports, must furnish them with the advices, informations, and notices which are required of them.

R. 244.

106. Captains and skippers must also obey the demands of ships of war of friendly powers, when the persons making the demand prove their nationality, under pain of forfeiting the

protection of the Government in respect of any damage they may sustain in consequence of the refusal. But they are not bound in time of peace to be subject to visit or other act of jurisdiction on the part of foreign ships, except so far as is ordered in relation to naval stations where cruisers are stationed for prevention of the slave trade. Captains and skippers to whom any violence is done must protest and make depositions of the circumstances to the proper authority.

107. The command of the ship in everything concerning manœuvres and nautical directions belongs exclusively to the captain or skipper. An agreement intended to evade what is laid down by this article is prohibited.

See Co. Com., 504 and Art. 66 (*ante*), and Art. 201 (*post*).

108. Where for any reason there is no captain or skipper, the command of the ship belongs to the chief officer, and failing him to the other deck officers, according to their rank, and then to the boatswain as far as the first port of call, where, in default of instructions from the ship's husband it (the command) will be provided for by the maritime or consular authority.

R. 235, 287, S. 627, 633.

Cf. The *Alexander*, 1 Dods 281; the *Cynthia*, 16 Jur. 748; the *Eliza Cornish*, 1 Spinks 36.

109. Captains and skippers are forbidden to ship on board the vessels they command arms or munitions of war unless they are entered on the muster-roll by the maritime authority or consular officials, having regard to the regulations laid down on the subject.

They cannot increase such arms and munitions, whatever be the number of the crew, without the authority of the above-mentioned functionaries.

110. Captains and skippers, in that which concerns lights for navigation at night, signals in time of fog, and the steering of the ship to avoid collisions, must conform to what is laid down by the regulations relative thereto. Further, on entering and leaving a port, in passing through channels, and in all other cases which are more than usually dangerous, they must be on deck assisted by the deck officers.

Cf. M.S.A., 1894, §§ 418, 419.

See Co. Com., Art. 504 (*ante*), C.C., Turin, 13, 6, 88, Giur. Pen., 1888, 307.

The present regulations as to lights and manœuvres are contained in Royal Decree, of 6th July, 1893 and 13th December, 1896.

111. Whatever the danger may be, the vessel must not be abandoned until the captain and crew have exhausted all the methods suggested by good seamanship to save her.

In no case is the vessel to be abandoned unless the captain or skipper has taken counsel with the ship's officers (the doctor excepted), and with two, at least, of the best seamen.

The captain or skipper must always be the last to leave the ship, and must save with him the log-book and other ship's papers, and as much as he can of the most precious articles.

See Co. Com., 514 (*ante*).

R. 232.

112. If a vessel be wrecked or lost through any other mishap, or if it be abandoned, for any reason, such as consequences of a collision or other accident happening to the ship, and any person is maimed or killed, the facts shall be drawn up in a formal deposition, and proceedings shall be taken by the maritime authority within the realm and by the consular authority abroad to obtain information as to the cause of the accident and upon the conduct of the captain or skipper, in the manner and form laid down by the regulations.

Whenever reasons are found for suspicion as to the conduct of the captain or skipper, or other person implicated in what has happened, the information obtained and documents will be sent to the competent authority to institute proper proceedings.

This inquiry is of a police or penal nature for the protection of the public and does not necessarily affect civil liabilities, which must be decided by ordinary course of law (C.A., Genoa, 24, 5, 89, Temi G., 1889, 400), but it appears that if a commander is acquitted no action lies against him personally, C.C., Palermo, 7 R.I.D.M. 458, 2 R.I.D.M. 730, and the civil proceedings are stayed pending the decision of the inquiry, Trib. Civ. Genoa, 27, 12, 98, 15 R.I.D.M., 246

Cf. M.S.A., 1894, §§ 425, 426, 464-466.

113. Captains and skippers when abroad are forbidden to harbour any person, even a native (Italian), who is being sought for by the police for ordinary crimes.

Cf. M.M.C., Art. 183 (*post*).

114. With the exception of the case provided for by Art. 375, captains and skippers of national vessels must give shelter

to any national seafaring person that they find left in a foreign country where no royal consular officer resides.

They are also clearly bound to receive on board such native Italians as the consular officials find it necessary, for any reason, to send home, provided the number of such persons does not exceed the proportion of 1 to every 100 tons burden.

The expenses of keeping them and their passage-money, in either case, when there is reason for it, will be regulated and repaid in the way which shall be laid down by the regulations.

Cf. M.S.A., 1894, §§ 192-194.

Sc. 34.

Chapter XI.

Of the Arrival of Ships.

115. On the arrival of national vessels in a port or roadstead of the realm, the official whose business it is to receive the ships will cause the log to be shown to him, and will affix his *visa* thereto page by page, filling up the blank spaces with lines, and commencing from the day on which the voyage began, or of the last *visa*, so as to secure the log from being altered.

At the same time the official who affixes his *visa* to the log will ask the captain or skipper if any damage has been sustained, and if there has not he will add to his *visa* the certificate, "No declaration of damage" ["*Nessuna dichiarazione di avaria*"].

If the captain or skipper reports that damage has been sustained, the officer will take a copy, signed by the captain, of that portion of the log which refers to the damage. If no mention is made of it in the log, the officer will demand and receive a deposition sworn by the captain about the damage sustained. The officer will notify in the log the fulfilment of this formality, and will return the log to the captain.

The copy or deposition mentioned above will then be forwarded by the official to the chief officer of the port who, if it is "general average," will at once proceed to a summary investigation of the nature, extent and cause of the said average, and afterwards forward all useful documents to the judicial authority whose duty it is to receive the account in accordance with commercial law.

In foreign ports, the proceedings mentioned in the preceding paragraph will be taken by the local authority in the first place the captain comes to, if such authority is authorised to do so by the laws of the country or international treaties, otherwise they will be taken by the royal consul.

See Co. Com., Art. 25 (*post*).

116. Captains and skippers of national vessels must present themselves in person, unless lawfully hindered, at the port office if within the realm, at the consulate if abroad, within twenty-four hours (of their arrival), and then leave the ship's papers and log, and the depositions referred to in Arts. 440, 441.

Skippers of vessels which have no log must, within the same time, declare to the maritime or consular authority any offences which have been committed on board. In foreign ports, where the local authority will not receive the declaration of general average mentioned in the preceding article, captains and skippers must produce their log-book to the royal consular officers immediately after being admitted to pratique.

See Co. Com., 516 (*ante*).

R. 240.

If there is no port office the report should be made to the nearest official who will forward it, 12 R.I.D.M. 590.

117. Captains and skippers of foreign vessels who enter the ports and roadsteads of the State must deposit their ship's papers at their respective consulates, and must further produce to the port officials, within twenty-four hours of being admitted to pratique, a certificate from the said consul of the deposit of such papers.

This arrangement is not applicable to the captains or skippers of foreign States in whose ports Italian consuls are not allowed to have the custody of the papers of Italian ships. Such persons must deposit their ship's papers at the port office.

Captains and skippers of all vessels, as well national as foreign, must besides, on arrival in a port or roadstead of the State, and whether in case of a voluntary or compulsory putting in, leave at the port office, within the above-named time, a statement of the name, tonnage and draught of water of the

ship, the name of the ship's husband or agent, the quality and quantity of the cargo, and the number of the crew and passengers.

See Co. Com., Art 518 *n*.

118. Captains and skippers of national ships must give to the port and consular officers of the ports they touch at such information about their voyage as they are asked for.

119. Captains and skippers of national ships must, when requested, produce the members of their crews and the passengers before the maritime authority within the realm, or the consular authority abroad, for the purpose of being confronted when necessary.

See Co. Com., 518 (*ante*).

CHAPTER XII.

Wreck and Salvage.

Salvage, even where both ships are foreign, rendered in Italian territorial waters, is governed by Italian law (C.C., Turin, 2 R.I.D.M. 78, 14 J.D.I.P. 241); when it is commenced on the high seas, but terminates, and is intended to terminate, in an Italian port, it appears that the court will look to the intention of the parties as to the law to be applied. If both ships were foreign and of the same nationality, probably their own law would apply; but when either of the ships is Italian (C.A., Genoa, 2 R.I.D.M. 214), and also when they were both foreign, but of different nationalities (C.A., Messina, 3 R.I.D.M. 766), in the absence of any special agreement the Italian law is applied.

Cf. Il Salvamento e l'assistenza nel diritto marittimo, by G. Benfante, Turin, 1889.

120. The captain of a national ship, who falls in with another vessel, even a foreigner or an enemy, in danger of being lost, must go to her help, and offer her every possible assistance.

This section shows a remarkable divergence between Italian and English law. According to the latter, a deviation for the purpose of salving property is not justifiable as against the owners of cargo or underwriters, though a deviation to save life is (*Stamp* v. *Scaramanga*, 4 C.P.D. 316). The only exception is that, after a collision, each vessel is bound to stay by the other so long as she needs assistance, irrespective of the question of which vessel is to blame for the collision (M.S.A., 1894, § 422), whereas in Italy, it being the legal duty of a vessel to render salvage services under this section, a deviation necessary for the purpose could not vitiate policies of insurance or contracts of affreightment.

121. The captain of a ship which has rendered salvage services to another vessel has a right to be repaid for all damages sustained (in rendering it).

If the salvage was rendered with risk of the ship or men, there will be also an award corresponding (to the risk), but which cannot exceed one-tenth of the value of the property salved.

There is a privilege on ship, freight and cargo for the damages, as also for the award mentioned above, which has priority after judicial charges and before other privileges allowed by commercial law.

G., 740, 745, 746, 754 (4); Sc. 226, 229.

See Co. Com., Arts 671 (2), 673 (2), 675 (2) (*ante*).

The first paragraph is in accordance with English law (M.S.A., 1894, §§ 544-546; the *De Bay*, 8 App. Cas. 559). But in England there is no limit as to the ratio of salvage remuneration to the value of property salved, except that in the extreme case of derelict it is rarely more than one-half. The lien for salvage reward in England ranks above all claims on the property prior in date to the salvage (Maude and Pollock, 4th ed., 652).

The privilege given by the Code of Commerce and this article does not, however, give a right to arrest a ship whilst in the course of a voyage at a port of call (C.A., Genoa, 1 R.I.D.M. 409), nor except under exceptional circumstances at all, C.A., Genoa, 1 R.I.D.M. 64.

This article governs the relations between the salved and salving ships, but cannot be invoked as between the owner and charterer of the salving ship, C.C., Turin, 5, 3, 97, 13 R.I.D.M. 214.

122. In case of wreck or other disaster befalling any ship on the coast of the realm, assistance for the shipwrecked people will be provided by the port officials. Any other local authority must come and assist the maritime authority.

Failing the maritime authority or port deputies, it is the province of the syndic of the place to make the first and necessary arrangements.

The authority who undertakes the salvage has power to require (the assistance of) the national forces and the services of any individual.

Cf. M.S.A., 1894, §§ 511-514.

123. In the absence of the captain, owners, or insurers of the ship and cargo, or their legally authorised agents, the carrying out of the salvage and the arrangements for the pre-

servation of the property which is wrecked, falls exclusively on the maritime authority.

Cf. M.S.A., 1894, § 511 (2).

124. If the vessel be of a foreign flag the port officer will at once inform the consular agent of the nation to which the ship belongs, and then, if required, shall give up the superintendence of the salvage, limiting himself to a tender of his assistance when required.

125. Whoever has received or recovered property from a shipwreck or disaster of the sea must immediately deliver it to the maritime or consular authority, or, failing them, to the local authority or other person who is superintending the salvage operations. Such persons have a right to be repaid their expenses and to a reward for the labour of recovering (the property).

Cf. M.S.A., 1894, §§ 518, 519.

126. The reward of persons assisting in the salvage, and of those who have supplied the means of towing or warping, or engines, rigging, or tools, will be regulated by the authority pointed out in Arts. 14, 15, and 16, having regard to the value of the property salved, the promptness with which the service was rendered, and the risk incurred in carrying out the salvage.

G., 742-746; Sc. 225.

In England, jurisdiction in salvage cases, when the amount claimed does not exceed £300, or the property salved £1000, is given to County Courts having Admiralty jurisdiction (31 and 32 Vict. c. 71, § 3; M.S.A., 1894, § 547 (4 *a*), in Ireland to Magistrates and others, and in all other cases to the Probate, Divorce and Admiralty Division of the High Court of Justice in England, and in Ireland, and to the Court of Session in Scotland.

127. No agreement or promise of reward for salvage assistance, whether of ship, lives, or merchandise, is binding if made on the high seas, or at the moment of the disaster.

G., 741; Sc. 227.

A salvage agreement is a valid contract by English law, and can be sued upon in British courts, but the court in the exercise of its equitable jurisdiction can set aside the agreement, on the ground of fraud, extortion, or duress (Maude and Pollock, 4th ed., p. 647, the *Rialto*, 1891, p. 175). The reasons for setting it aside appear to be much the same in both countries, C.C., Turin, 3 R.I.D.M. 766, 15 J.D.I.P. 430; C.A., Messina

3 R.I.D.M. 766, 15 J.D.I.P. 699; C.A., Genoa, 2 R.I.D.M. 214. The article does not apply to a contract made to get a ship afloat, C.C., Palermo, 13 R.I.D.M. 817.

128. The crew are always bound to work to save the ship, her apparel, and cargo.

G. 740; R. 275.

See Co. Com. (*ante*), Arts. 535, 536, 544.

In England a seaman's claim for wages is barred if he does not exert himself to the utmost to save ship, cargo and stores (M.S.A., 1894, § 157.)

129. In the case in which the salvage is carried out by the officials of the maritime authority, if an advance of money is urgently needed, it will be furnished in the manner prescribed by the regulations.

130. The port officials who superintend the salvage have power to put up for sale merchandise and other articles which cannot be preserved, or the preservation of which would occasion heavy expenses.

They may order the sale of the whole or a part of the other articles which are salved, when such an expedient is necessary to repay money advanced under the preceding article, to satisfy salvage claims and to provide board for the crew, and the expenses of sending them home, and to pay the travelling expenses of the port employees.

Cf. M.S.A., 1894, § 522.

131. When the salvage operations are complete, the captain of the port will, by public advertisements, call on those interested to prove their rights to the delivery of the property salved. When one year has elapsed from the publication of the notices without persons proving their right to the salved goods, the captain of the port will cause them to be sold, and forward the proceeds to the funds of the Seamen's Bank for the account of whom it may concern.

See Art. 151 (*post*).

Cf. M.S.A., 1894, §§ 523-529. If the owners of the property do not appear, the property is sold by order of the court, and the salvors paid out of the proceeds.

132. On the lapse of five years from the publication of the advertisements without any one having made a claim, or if the claims which have been made have been rejected by a Judicial

sentence or summary judgment, the proceeds of the sale are turned over to the public exchequer.

In Great Britain one year (M.S.A., 1894, § 525).

133. The following (debts) have privileged claims, in the order specified, against the proceeds of the sale of ship and cargo :—

(1.) The expenses of the sale.

(2.) The expenses of salving and guarding the shipwrecked property, including the remuneration of the persons assisting in the salvage and the travelling expenses of the port employees.

The board of the captain and crew, and their travelling expenses home, and the wages of the crew, have a privileged claim against the residue of ship and freight; and afterwards the privileged debts in the terms of the commercial law.

See Co. Com., Arts 671 (2), 673 (2, 3), 675 (2, 4-7).

Cf. M.S.A., 1894, § 525.

134. Any person who falls in with a derelict ship on the high seas and succeeds in bringing her safely into a port of the realm, must make a deposition of the facts to the maritime authority within twenty-four hours of his arrival. If the recovery of the ship took place out of sight of land, the finders have a right, in addition to the repayment of their expenses, to one-eighth part of the value of the ship and cargo salved.

If, on the other hand, the ship was found in sight of land, the person who salves her has a right to be repaid his expenses, and to an award, as laid down in Art. 121.

Sc. 226.

There is no difference in the principle of salvage of a derelict and ordinary salvage services in England, but the former are more highly remunerated, generally from one-third to one-half of the value being given by English courts; *ergo*, if a derelict is picked up in the Mediterranean, it is obviously to the advantage of the salvors to take her to Malta or Gibraltar, rather than into an Italian port.

135. Merchandise, rigging, clothes, valuables, and other articles of unknown ownership, found on the coasts of the realm at sea, flotsam, lagan or jetsam [*a galla, sott'acqua o sulla spiaggia*], or in the harbours, basins, waterways, and canals, unless their value is less than five *lire* (four shillings),

must, within twenty-four hours, be declared by the finders to the local maritime authority, or else to the syndic. The finders of any of the above articles who, within the limited time before mentioned, have put them in a place of safety and declared them, have a right, in addition to the repayment of the expenses incurred in recovering them, to a reward equal to a one-third part of the value of the things which are salved, if they were flotsam or lagan when found, and to a reward calculated in accordance with Art. 718 of the Civil Code if they were jetsam, on the shore, slips, or moles of the place when found, or if they are cetaceans, washed ashore, the property in which belongs to the State.

Art. 718 gives to finder $\frac{1}{10}$ if the value is less than 2,000 lire (say £75), and $\frac{1}{20}$ if more.

In England, royal fish, which apparently include "sturgeons, grampuses, whales, porpoises, dolphins, riggs and graspes, and generally whatsoever other fish have in themselves great and immense size and fat," belong to the Crown and its grantees (see *In the matter of a whale*, 2 Hagg. 442).

Cf. M.S.A., 1894, §§ 518, 519, 536, 537.

136. In the cases mentioned in the two preceding articles, the captain of the port will make provision for the taking charge of, and for the guardianship and sale of, the goods salved, and for the publication of the advertisements, in accordance with Ars. 130 and 131.

Whenever the residue of the goods recovered is not claimed by those to whom they belong within the term of five years in the case provided for in Art. 134, and within one year in the case provided for in Art. 135; or if, when made, the claims are rejected by a judicial decree or summary judgment, the said residue belongs to the finder.

In England the residue would belong to the Crown or its grantee, and in the former case would be paid into the Mercantile Marine Fund (see M.S.A., 1894, § 525).

137. If a ship is sunk without showing any trace above water, the captain of the port of the maritime district in which the disaster has occurred will at once publish a notice of the circumstance.

When the owners and persons interested in the ship or cargo do not, within two months from the date of the advertisement, come forward and declare their intention of under-

taking the salvage, or, having appeared, allow four months to elapse without taking the salvage operations in hand, or, after taking them in hand, abandon them for a term of four months, running from the day on which they were in a position to continue them, the sunken goods are deemed to be abandoned, and enure to the benefit of the State, saving the provisions of Arts. 174 and 176.

Cf. M.S.A., 1894, §§ 531-533.

138. In the case provided for by Arts. 134 and 135, the crew of a ship which finds goods which are abandoned or derelict share in the award given to the ship in the following manner :—

If the crew are engaged on shares [*a parte*] the award will be treated as a profit of the voyage and apportioned in the same shares.

If the crew are engaged by the month or by the run, half of the award belongs to the owners [*armatori*] and the other half will be apportioned amongst the crew in proportion to their respective wages.

Whenever the salvage operations lengthen the voyage, a person shipped by the run has, in addition, a right to an increase of pay, in accordance with commercial law.

G. 747-749; Sc. 228.

See Co. Com., Art., 532 (*ante*).

Apportionment in English law is made by the court or receiver of wreck, having regard to the special circumstances of each case (M.S.A., 1894, §§ 555, 556), *e.g.*, where the ship itself is the principal salvor, as in the case of an ocean towage of a broken-down steamer, the owners will get from two-thirds to three quarters of the total amount, the master a lump sum, and the residue divided amongst the crew in accordance with their ratings, giving a double or treble share to those who have been specially active.

Chapter XIII.

Of Fishing.

Art. 139. Maritime fishing is divided into limited and unlimited fishing.

"Limited" fishing is that which is carried on in the territorial waters of the realm, within the boundaries of the fishing district to which the boat which is carrying it on belongs; and

includes the interiors of harbours, canals, and lagoons, in which the water is salt, and which communicate with the sea. The division of the sea-shores of the realm into different fishery districts is carried out by a royal decree on the advice of the Minister of Marine. "Unlimited" fishing is that which is carried on abroad, or within territorial waters outside the boundaries of the district to which the (fishing) boat belongs.

The Mer. Ship. Act, 1894, Part iv., distinguishes, for certain purposes, between ships and sea-going vessels employed exclusively in fishing on the coasts of the United Kingdom, and those whose operations are not so limited, and by § 744 of the same Act, British vessels, not belonging to Canada or Newfoundland, employed in whale, seal, walrus, or Newfoundland cod fisheries are deemed to be foreign-going ships, and treated as such and not as fishing-boats. By the Fishery Convention of 1882, relating to the North Sea, between Great Britain, Germany, Belgium, Denmark, and Holland (see Fisheries Act, 1883, § 28), as by that, not yet ratified, between Great Britain and the United States relating to the North American fisheries, the limit of exclusive fishing, which is an apparent definition of the law of territorial waters, is fixed at three miles from low water mark, and in case of bays, three miles from a line drawn across the bay at the place nearest the sea where such line does not exceed ten miles in length.

See note to Co. Com., 665 (*ante*).

140. Fishing in the sea belonging to the realm is under the jurisdiction of the Maritime Administration, so far as concerns the police regulations for the sea and navigation, and to the requirements of the fishery laws.

Cf. Sea Fisheries Act, 1883, §§ 4, 5, 7.

141. The setting-up of nets for tunny or mullet in the territorial waters of the realm, as also the setting-up in the sea or on the shore of works adapted for the nurture and cultivation of fish, testacea, crustacea, shell-fish, corals, and sponges, must not be carried out except under a concession from the Minister of Marine, saving rights already acquired as to such fish.

Cf. 3 Jac., c. 12; Crown Lands Act, 1885 (48 and 49 Vict., c. 79), § 3; Sea Fisheries Act, 1868 (31 and 32 Vict., c. 45).

142. The said concessions will be made at an annual rent, and under any other conditions which may be determined by the deeds relating to the matter.

143. Fishing in the sea belonging to the realm is exempt from any contribution whatever from the vessels of national

fishermen, or from foreigners admitted to the status of native fishermen in virtue of Fishery Treaties.

Vessels of foreign fishermen which are not assimilated to native craft by special treaties will pay a sum to be fixed by royal decree.

By the Sea Fisheries Act, 1883, fishing in the sea within the territorial limits of the realm is forbidden to foreigners, but is not necessarily open to all subjects, it is also competent for Parliament to forbid fishing by British subjects in any part of the sea, certain fisheries below low-water mark are also granted to individuals or corporations, to the exclusion of others; but such grants are, as a rule, confined to spaces *inter fauces* and not in the open sea (see *De Jure Maris*, by Chief Justice Hale, chaps. iv. and v.). Edward I., indeed, seems to have strained this prerogative so far as to grant liberty to the Hollanders to fish "*in mare nostro prope Jernemuth* (Yarmouth)". Possibly, however, those "Hollanders" may not be Dutchmen, who, as such did not exist in the reign of Edward I., but the inhabitants of that Holland which constitutes the south part of Lincolnshire, bordering on the Wash.

To this suggestion it may be objected that the subjects of the Counts of Holland must have been entitled to be called "Hollanders," long *ante* Edward I.—(Note by Ed. of *Law Mag. and Review.*

144. Boats intended for "limited" fishing will be provided with a licence by the local maritime authority, renewable from year to year, which will be granted to the owner and will set out the name of the fisherman who takes charge of the boat. Those which are intended for "unlimited" fishing will be provided with the regular ship's papers required for navigation with the exceptions mentioned in Art. 39.

See note to Art. 139 (*ante*).

145. Fishing-boats of foreign nationality which are admitted to fish in the waters of the realm, and are furnished with the licence required by the preceding Art. 144, will be subject to the same regulations in all respects as those laid down for natives.

146. Boats which are only intended for the local service of fixed tunny and mullet nets are exempt from the obligation of having ship's papers and the licence required by Art. 144, and are only subject to the regulations of the marine police.

That is, boats employed to get fish out of the fixed nets or weirs, and carry them ashore, are not, in the proper sense, fishing-boats at all.

147. Any person who desires to take charge of a vessel for limited fishing must—

(*a*) Be registered as a seafaring man in the first or second category.

(*b*) Be of the full age of twenty-one years.

(*c*) Have twelve months' experience in fishing or in the capacity of a sailor.

See Arts. 18 and 19 (*ante*).

To get a certificate as "skipper" of a fishing-boat, a man must, in Great Britain, besides satisfying the examiners of the Board of Trade of his fitness, have had a certificate as "second hand" for twelve months (M.S.A., 1894, §§ 413-416).

148. To command vessels for "unlimited" fishing, it is necessary—

(*a*) To be of the full age of twenty-one years.

(*b*) To be inscribed on the register of seafaring men of the first category.

(*c*) To have two years' experience of "unlimited" fishing, or of service on board national (Italian) vessels.

(*d*) To give proof of capacity in the manner which may be required by the regulations.

See note to Art. 139 (*ante*).

149. For the fisheries beyond the Straits of Gibraltar, the Suez Canal, and the Bosphorus, the person in charge of the vessel must be, at least, of the rank of master or captain, according to the seas in which the fishing is carried out, following the limitations prescribed by this Code.

See note to Art. 139 (*ante*).

Chapter XIV.

Seamen's Deposit Banks.

150. In chief towns of a maritime district, to be defined by the regulations, a bank is established under the name of "Seamen's Deposit Bank" [*cassa dei depositi della gente di mare*], which is managed by the respective port captains, and kept by the treasurers or other accountants of the State.

151. This bank is intended to receive provisionally—

(1.) Money and valuables belonging to the heirs of seamen who have died at sea or in foreign countries.

(2.) The proceeds of salvage of ships which have been wrecked on the shores of the realm or abroad.

(3.) The proceeds of goods found on the beach or recovered at sea.

(4.) Money lodged as security for dues or repayments to the public Treasury, and in respect of any other matter which may be in dispute, whether (the money is lodged) in favour of the Treasury or of seamen.

In Great Britain these ends are met as follows:—

(1.) Goes in the first instance to the Board of Trade; and, if not claimed within six years, to the Consolidated Fund (M.S.A., 1894, §§ 179, 676 (*c*). (2.) and (3.) After a year are paid over to the Mer. Mar. Fund or to grantee of the Crown (M.S.A., 1894, §§ 523-526, 676 (*g*). (4.) In case of dispute as to wages, salvage or other matters, money can be paid into court to abide the event.

152. The conditions under which the said moneys will be paid into the Deposit Bank and advanced will be laid down in the regulations.

153. The forms in which the accounts of the said bank are kept will be determined by regulations.

CHAPTER XV.

General Provisions.

154. All persons inscribed in the (seamen's) lists and registered must obey the chief port officers, consular officials, and officers commanding ships-of-war belonging to the (Italian) State which they fall in with on the high seas, or in foreign countries where there is no resident consular officer; and are bound to carry out these orders, as far as possible, for the good of their compatriots, the honour of the flag, and the benefit of the maritime service.

They are further bound to present themselves at the office of the above-named authority, on being merely asked to do so.

The only analogous provisions in English law are the Acts regulating the pressing of seamen and others for the service of the Crown.

155. Should it happen that money is needed to provide for sending home or assisting mariners who are shipwrecked

or otherwise deprived of their ship, the advance will be made in manner determined by the regulations.

Cf. Mer. Ship. Act, 1894, §§ 190-194.

156. Provision will be made in a special form established by royal decree, for the exchange of existing licences as captain and skipper for those prescribed by this Code, as well as for granting licences to naval architects of provinces of the realm in which formerly no licences were necessary for their industry. Naval architects to whom this article refers must show a *bonâ fide* and full exercise of their industry antecedent to the publication of this Code.

Masters and skippers, and seamen qualified (to command) in small craft or fishing, who, prior to 1st January, 1865, had authority to extend their voyages beyond the limits assigned to their respective ranks, or who have commanded ships of greater burden than allowed to them respectively by Arts. 59 and 60, will continue to enjoy the like facilities.

A similar provision to this with regard to certificates to officers was made on the passing of the Mer. Ship. Act, 1854, by § 135; to engineers, by the Mer. Ship. Act, 1862, by § 9; and to skippers and second hands of fishing-boats, by Mer. Ship. (Fishing-boats) Act, 1883, by § 40, by granting to all persons who, before those Acts, had served as officer, engineer, skipper, or second hand, certificates of service in lieu of requiring them to obtain certificates of competency by examination, this provision as regards skippers and second hands of fishing boats is still preserved, M.S.A. 1894, § 415.

TITLE III.

The Administration of Ports and Sea-Coasts.

CHAPTER I.

The Sea-Shore and Sea-Coasts.

157. The expressions "sea-coast" and "sea-shore" include ports, docks, cuts and creeks, coves and roadsteads which are subject to the Maritime Administration in all matters concerning their use and maritime police.

Portions of the shore and other places belonging to the sovereign domain, which are declared by the Maritime Administration to be useless to the public, may be transferred from being the property of the public domain to the private property of the State.

This means, as the subsequent articles show, that a concession of the sea-shore (public or national property) could not be granted to an individual, but if declared by the proper authority not to be needed for public use, such shore may be granted as though the private property of the State. The matter is somewhat analogous to the Crown rights in the sea-shore in England and the Crown property ceded to the State in return for the Civil List, and subsequently granted to private persons for docks, railways, etc., by Act of Parliament (see note to Art. 158, *post*).

158. Permanent concessions of the property belonging to the public domain mentioned in the preceding article must be authorised by law.

Temporary concessions of the above-mentioned property, and all matters relating to it, are granted by the Maritime Administration. But it will take counsel with other administrations which have an interest in the matter, when it is intended to construct works of a permanent nature or of special importance on the space to be conceded.

Down to the first year of the reign of Queen Anne the Crown possessed, and in very many cases had exercised, the right of granting its property in the shores of the realm to individuals, and such grants still hold good; but in that year a statute was passed prohibiting the alienation of Crown lands for the future (1 Anne, ch. 7, § 5), and therefore since then an Act of Parliament has been necessary for the erection of works on the sea-shore, and even then the consent of the Board of Trade and the Lords of the Admiralty must be obtained (Harbours, Docks and Piers Clauses Act, 1847, § 121; Crown Lands Act, 1866, § 8; The Harbours Transfer Act, 1862).

159. Any alterations in the harbours, sea-shore or sea-coast is forbidden, unless express authority has been obtained. If the unauthorised alteration is completed, the Maritime Administration will lay a complaint against the offender before the judicial authorities for the proper penal proceedings; but if the alteration is not yet complete it will take similar proceedings, and in addition prohibit the continuation of the works and require the offender to reinstate things in their original condition; and will proceed officially, and at the expense of the said offender, if he fails to do so, to carry out whatever the maritime interests require to be at once carried out.

This could be done in England either by mandatory injunction against the continuance of the works or by indictment, if they in any way constituted a nuisance.

160. It is prohibited to dig sand, stones, shingles, or to

make any other excavation on the sea-shore or coast or within the precincts of ports beyond the places set apart for this purpose, except under a special permit from the maritime authority.

The English law is very obscure on the right of a subject to take sand, etc., on the sea-shore. In Devon and Cornwall such a right undoubtedly exists, under 7 Jac. I., c. 18; but whether that statute was declaratory of a pre-existing right or itself granted a right was argued at great length in *Bagott* v. *Orr*, 2 Bos. and Pull., 472, and not decided. If the former, then such a right would appear equally to exist in all maritime counties; if not, it must depend on some local custom different in different places. The right to take shingle, etc., from the shore in a port may, under 54 Geo. IV., c. 159, § 14, and 25 and 26 Vict., c. 69, § 16, be prohibited by order of the Board of Trade (see *Nicholson* v. *Williams*, L.R. 6 Q.B. 632). But no private person, even if lord of the manor under a grant from the Crown, has a right to remove shingle, etc., from the shore so as to endanger the land inshore of it (*A.-G.* v. *Tomline*, 12 Ch. D. 214, 14 Ch. D. 58. It must, however, be remembered that in English cases the disputes as to rights on the sea-shore refer almost always to the shore between high- and low-water mark, and therefore could not occur in Italy, on whose coasts there are practically no tides. The shore above high-water mark in England is governed by the same law as land in the interior of the country.

161. Places specially set apart for the free extraction of sand and shingle will be shown in special tables which will be published in every commune of the maritime department. In other places, not shown in these tables, digging by a person not provided with a special permit from the authority is deemed to be forbidden. The table will be drawn up in the port office with concurrence of the engineers entrusted with the service of harbours and shores; it will be laid before the Town Council [*Giunta Municipale*] of the place, and approved by the Minister of Marine.

When it concerns a locality subject to a military servitude, or situated at a less distance than 65 metres from road works, it is deemed to concern the administration interested alone.

See note to the preceding article; it would appear that whatever may be the actual legal right to take sand in Great Britain, it is not likely to be interfered with unless its exercise is injurious to harbours, etc., when it would be forbidden by the Board of Trade, or to private property, when it is forbidden by the common law.

162. Permission to dig in places not set apart for such a

purpose in accordance with the preceding article must be requested from the captain of the port, and if the digging is to be at a less distance than 65 metres from works on communal or private property, consent of the municipal authority must be obtained, the persons interested being also consulted.

See notes to the two preceding articles.

Chapter II.

Police Regulations for the Administration and Safety of Seaports.

163. The port officers provide places within their jurisdiction for maritime service, and regulate and superintend :—

(*a*) The entry and exit of ships.
(*b*) Anchorages and moorings.
(*c*) The embarkation and disembarkation of passengers.
(*d*) The loading and discharge and storing of goods and ballast.
(*e*) The use of fire and precautions against fire.
(*f*) Everything connected with the police and security of the harbour and roadstead and their appurtenances.

The extent of the control of the port officers within docks will be determined by the acts of concession and special regulations.

In towns and maritime stations which communicate with the sea by canals or navigable rivers, the limits of the places subject to the port officials will be determined by agreement between the captain of the port of the department and the Town Council of the place concerned, and if they cannot agree, then by mutual reference to the Minister of Marine and the Minister of the Interior.

R., 242.

In England the powers of harbour authorities are regulated by the private Acts under which they exist, and the general powers of the Harbours, Docks, and Piers Clauses Act, 1847.

There is no right of action against harbour officials for delay in loading and discharging occasioned by these orders, as they are Government officers and not under control of the courts, C.C., Rome, 24, 8, 82, Legge II., 4; *cf. Wright* v. *Lethbridge* 6 Asp., 558.

164. Landing-places, slips, and piers which are the ter-

minus or branch of a railway, are under the jurisdiction of the port officers, and the road authority cannot interfere in such places, except in matters which concern the working of the railway.

165. In ports where sheers, cranes, or other mechanical contrivances for the loading and landing of goods have been placed on landing places, slips, or piers by the Corporation or Chamber of Commerce, or others, the working of such machines must be regulated with the consent of the port officers, in whom is vested the police superintendence both of the machines and of the persons appointed to manage them.

Cf. Harbours, Docks, and Piers Clauses Act, 1847, §§ 21, 22.

166. All persons employed in nautical affairs, ballastmen, interpreters, and bumboatmen, whilst at work in harbours, or on the seashore, or in basins or cuts, are subject to the local maritime authority, and bound to observe the regulations which relate to them.

167. No boats or other vessels, excepting pilot boats and tugs, are permitted to communicate with ships which come into harbour before the latter have complied with the formalities laid down by law as to health and public safety.

No person is allowed on board a British ship, except by leave of the master before the seamen are discharged (M.S.A., 1894, §§ 218, 219, 536), and this law can be extended to foreign ships by Order in Council in cases of reciprocity, by § 219 of the same Act.

168. Vessels must not come into the inner ports or moorings before discharging gunpowder and unloading firearms that are on board, except in case of necessity, when the fact must be immediately declared.

Captains who desire to load or discharge goods of an inflammable nature must give notice at the port office, so that precautionary measures may be taken.

In case of fire in harbour, or on the quays, or the neighbouring parts of the town, captains of ships must collect their crews and carry out all instructions that may be given by the maritime authority.

Under the Harbours, Docks, and Piers Clauses Act, 1847, § 71, no gunpowder is allowed on board except by permission of the harbour master, and by § 5 of the Explosives Act, 1875, not more than 30 lbs. of

gunpowder can be kept in one place, but by § 101 of the Act the means of making the signals required by the Mer. Ship. Act, 1894, appear to be exempted from this regulation.

169. The (port) regulations will make all provisions in respect to moorings for ships, landing places, ballast, the use of fire, and in general for the safety and police of anchorages.

170. In case of necessity, or when orders given are not obeyed, the port officials can make vessels moor or unmoor on their own authority, or increase their moorings, or carry out any other necessary manœuvre at the expense of the ship.

The port officers may even, in a case of extreme urgency, without other form than a second verbal order, cast off the moorings of a ship which the crew have refused to veer.

Similar powers are conferred on harbour masters by the Harbours, Docks, and Piers Clauses Act, 1847, §§ 52, 53, 58, 65, and 71.

171. Whenever a ship has no crew she must have on board a watchman over twenty-one years old.

Ships which are at anchor in tiers, or in the vicinity of piers, or in other places where it may be necessary to veer the mooring, must always have on board the number of persons required to carry out this manœuvre.

This article does not apply to lighters, C.A., Genoa, 10 R.I.D.M. 357. R. 236, 239.

172. Ships, both on arrival at and departure from a port or coast of the State, must show their colours.

By the Queen's Regulations for the Navy men-of-war have to hoist the colours when getting under way and coming to, if there is light enough to see them, and by M.S.A., 1894, § 74, merchant ships on entering and leaving port, and on demand by one of Her Majesty's ships. There is also in France a law similar to this (see French Pilotage Decree, 29th August, 1854, Art. 8).

173. No ship is allowed to weigh anchor for the purpose of leaving a port or roadstead in which she is anchored without a clearance (*biglietto d'uscita*) from the maritime authority.

If the captain or skipper intends to leave between sunset and sunrise, he must expressly declare it when asking for his clearance.

This clearance will not be given unless it is shown that fines for breaches of the provisions of the laws, and dues owing to the Treasury, are paid, and that all the formalities pre-

scribed by the police are complied with. If the departure of the ship is delayed more than five days from the date of the clearance, the latter must be renewed. As regards steamships, a clearance may be granted for a specific period of time.

Cf. 39 and 40 Vic., c. 36, §§ 127-132; 41 and 42 Vic., c. 15, § 6; 10 and 11 Vic., c. 27, § 48; Mer. Ship. Act, 1894, § 68.

That is, that a fresh clearance is not necessary for every voyage in the case of all steamers, such as tugs or passenger steamers making short voyages.

174. It is forbidden to throw earth, stones, or any sort of thing into ports, roads, navigable channels and their adjuncts, or into their entrances and approaches from outside, within limits to be determined by the maritime authorities in places in which special reasons require such provisions.

If on the banks of navigable channels, or on quays or piers, there are warehouses or workshops for any trade or manufacture, in the exercise of which it is impossible to avoid making a sediment in the water, those who exercise the business must bear the necessary expense of cleaning out the deposit from time to time, in accordance with the orders of the maritime authority.

If, in the course of loading, unloading, or transhipping, and especially in the management of ballast, in spite of the prescribed precautions, any portion of the articles or materials falls overboard and cannot be at once drawn up by those interested, all expenses of removing the obstruction will be paid, according to the judgment of the maritime authority, by the captain of the ship or by the persons in charge of the lighters set apart for such operation.

Cf. Harbours, Docks, and Piers Clauses Act, 1847, § 73; 54 Geo. III., c. 159; Harbours Transfer Act, 1862, § 16.

175. Condemned ships [*Le navi non più atte alla navigazione*] in ports, basins, dykes or channels, or other anchorages, cannot be used by their owners as warehouses or receiving hulks, or for any other purpose, but must be broken up when ordered by the commission mentioned in Art. 191 of this Code.

If the orders of the commission are not carried out, the maritime authority may carry out the breaking up of the ship at the owner's expense.

In Great Britain unserviceable vessels and wrecks and other obstructions may be removed by harbour masters under §§ 52, 56 and 57 of the

Harbours, Docks and Piers Clauses Act, 1847; but the power to destroy appears to be confined to wrecks or vessels sunk in harbours or the approaches thereto, or in places where they constitute a peril to navigation, and is given by the M.S.A., 1894, §§ 530, 531, and by local Acts.

176. If any ship or other vessel is sunken inside a harbour or other maritime station, or in a channel leading to such, the owners must take steps to remove the obstruction from the bottom at their expense within the time fixed by the officials of the port, otherwise the ship will be deemed to be abandoned to the State, which will from that time take steps to clear the obstruction.

177. The port officers will watch carefully that no damage is done to the slips, piers, landing-places and causeways, nor to the floats, buoys, nor to inanimate bodies generally, nor to other works belonging to the State. When any damage happens through the default of captains, skippers, or other persons, the maritime authority will ascertain its amount by experts, and take proceedings to have it paid.

Objection to the order of the maritime authority will not suspend the payment, unless the right to repayment be proved before the proper tribunal.

Cf. Harbours, Docks and Piers Clauses Act, 1847, § 74. The liability of the owner is absolute under this section, except in case of unavoidable accident, *Adamson* v. *River Wear Commissioners*, 3 App. Cas., 743, or compulsory pilotage the *Clan Gordon*, 7 P.D. 190. The law seems to be the same on the first point under this article in Italy (C.A., Genoa, 9, 9, 87, Ecô. Giur., 1887, 345), but as to whether the latter would be a defence in Italy, see note to Art. 66 (*ante*), and Art. 201 (*post*).

178. Merchandise and other articles are not allowed to be left on piers, quays, landing-places, and other places in harbours and docks, except by permission of the maritime authority, and on payment of the proper dues.

Notwithstanding such permission and payment, the port officer, when the period for which the licence was given has run out, and even before, when necessity requires it, can order the removal and shifting of the articles deposited, and if this is not done may proceed to do it officially at the expense of the owner.

Cf. Harbours, Docks and Piers Clauses Act, 1847, § 68, and local Acts.

179. Owners of frontages on the banks of channels or rivers which run into a harbour may construct suitable shore-walls (campsedging) to keep up the land. The rules laid down in the regulations must be observed in the construction of such walls.

Similarly, no opening of a stone quarry or other substantial excavation (in the bank) can be made except by the consent of the maritime authority.

180. Fishing in ports, basins, canals and dykes is prohibited, except with the permission of the maritime authority.

The discharge of fire-arms and lighting explosive substances afloat or ashore is especially prohibited, save under a special permit from the maritime authority.

Cf. Harbours, Docks and Piers Clauses Act, 1847, §§ 71, 72, and local Acts.

Chapter III.

Police Jurisdiction in Harbours and Roadsteads.

181. The police jurisdiction over ordinary offences in harbours where there is an officer of public safety is exercised by him.

In places where there is no such officer, the port officers will take the necessary precautions in urgent cases and give immediate information to the judicial authorities.

In large ports there is usually in Great Britain a special water police, and under the ordinary jurisdiction, in harbours, etc., special constables can be appointed under § 79 of Harbours, etc., Act, 1847.

182. In case of disturbances on board foreign ships anchored or moored in ports, roadsteads or channels, the officer of public safety or of the port, on receiving notice, will intervene to prevent further disturbance, giving immediate warning to the consular agent of the nation (to which the ship belongs).

If the offence is committed within the body of a county, the ordinary police regulations operate in England. There was much doubt amongst the judges whether this was so in territorial waters outside a county (see *R.* v. *Keyn*, 2 Ex. D. 63), but the doubt is now set at rest by the Territorial Waters Jurisdiction Act, 1878, which regulates the exercise of the jurisdiction.

183. Captains and skippers of all flags and the owners of small craft are forbidden to shelter or conceal offenders, whether natives or foreigners, or deserters from the military or naval forces, on board their ships.

Cf. Naval Discipline Act, 1866 § 25 ; Army Discipline and Regulation Act, 1879, § 146, for seamen of the Royal Navy and soldiers, and, in cases of felony, by the common law, and in some cases of misdemeanour, by statute, persons harbouring offenders are punishable as accessories after the fact.

See M.M.C., Art. 113 (*ante*).

184. It is equally forbidden to keep on board ships anchored or moored in ports, roads, cuts and channels within the realm, whether the ships be fitted out or dismantled, any persons except the crew, even if they are called watchmen, without the permission of the maritime authority.

The same authority can make captains and skippers dismiss watchmen, when such persons have been convicted of the offences pointed out in Arts. 28 b and 62 b, or admonished as rogues and vagabonds, or as suspicious characters within the meaning of the Law of Public Safety, and who, on account of their bad characters, have been reported to the authority of public security.

There is no similar provision to this in Great Britian; on the other hand the old Acts relating to manning the Navy provided for the shipment of "lewd and disorderly men servants, and rogues and vagabonds, sturdy beggars and vagrants," on board H.M. ships, 2 and 3 Anne, c. 6, § 16.

185. The patrol, composed of agents of the port officials, has a right to visit, either by day or night, any ship or other craft, and sheds, warehouses and other closed places situated on the shores of the port. Every person must give to the said patrol his Christian name and surname and address, when demanded. The patrol has a right to arrest a person caught committing an offence.

Resistance, outrage, violence, and force used against the agents of the port officers in the exercise of their duty are treated as done to agents of the public force.

The ordinary police would exercise this power in Great Britain; the harbour master has also the power to enter to search for fire, etc., under § 72 of the Harbours, Docks, and Piers Clauses Act, 1847; Custom House

officers may search any ship, under § 182 of the Customs Laws Consolidation Act, 1876.

186. Persons belonging to the class of seafaring people, whether natives or foreigners, as well as any person carrying on a trade or profession within the port, may be ordered by the maritime authority to appear at its office.

A *subpœna*, or a warrant, would require to be served on a person to compel him to come before the magistrates unless he were actually arrested for an offence.

Chapter IV.

Boats and Other Craft for Use in the Port.

187. All boats and wherries intended to carry passengers and goods, hulks, fishing-boats, pleasure boats, and all other craft belonging to ports, roads, channels, and navigable cuts, are placed under the superintendence of the maritime authority.

No one can be admitted to carry on the profession of a waterman, to navigate flats, hulks, pleasure boats, or any other species of craft, without a licence from the port office, which is granted on the terms laid down in the regulations.

Pleasure boats are licensed in England by the Urban Sanitary Authority, except in London, under § 172 of 38 and 39 Vict., c. 55; lighters, etc., are generally regulated by local Acts, or, as in the Thames, Medway, and Lea, by the Watermen Acts, and other boats by the Conservancy Acts.

188. In harbours which communicate directly with lagoons, canals, and navigable rivers, the obligation to have the licence spoken of in the preceding article does not apply to gondolas or other small boats specially intended for use in the city, canals, or rivers, which will be furnished with a licence from the Corporation.

Nevertheless, such craft, when they come within the place under the jurisdiction of the port office as prescribed by Art. 163, are under the surveillance of the port officer, and those who navigate them are bound to observe the maritime regulations as to order and police.

Any conflict of jurisdiction which may arise between the port officials and the Town Council as to the regulations for the management of the craft above referred to, will be settled

in the first instance by the authority of the prefect of the place, and in the last resort by royal decree.

See note to preceding article.

189. A person who is furnished with a licence and number allowing him to navigate a boat within the port, will, if convicted of the offences mentioned in Arts. 28 b and 62 b, be deprived of his licence.

The port official has also the power of temporarily suspending the licence of a person convicted of smuggling, or cautioned [*ammonito*] as a suspicious character within the meaning of the Law of Public Security.

190. Any one wishing to establish a service of steam-tugs for towing ships in ports, roads, creeks, channels, cuts, or straits must be furnished with a proper licence from the maritime authority, and conform to what is prescribed in the regulations relative to the matter.

Captains and skippers of steam-tugs are bound, on the mere request of the port officer, to render assistance in salving and towing vessels which are in danger.

Art. 121 applies to cases within this Article.

191. The special commission, which will be annually instructed in the manner prescribed to proceed with the inspection of flats and other craft for loading and unloading, will decide without appeal which are to be broken up as worn out and which are to be repaired. When the orders of the commission are not carried out within the time allowed, then, if the orders were to break up the craft, the port officer will carry it out at the expense of the owner, if to carry out repairs the owner will incur the penalties laid down in this Code and the regulations.

Chapter V.

Local Pilots.

192. In every port, strait, channel, and other anchorage ground in which it is considered convenient, there will be established a body of local pilots for the use of ships.

In each pilotage body there will be one or more head pilots entrusted with the direction of the service.

193. Pilots will be furnished with a licence from the port officer, and will be inscribed on a proper register. The conditions on which pilots and head pilots will be admitted, and the rules for the service will be determined by regulations.

Cf. Mer. Ship. Act, 1894, §§ 586, 618.

194. A pilot convicted of the offences mentioned in Arts. 28 b and 62 b will be struck off the register, and not restored unless he obtains a new qualification.

Cf. Mer. Ship. Act, 1894, §§ 606-609, 621.

195. Pilotage rates will be fixed according to the tariff established by royal decree.

Cf. Mer. Ship. Act, 1894, § 582 (6).

196. Any promise of a higher rate than that which the tariff allows, and made at a time when the ship is in danger, will be void.

Cf. Mer. Ship. Act, 1894, § 592, but a pilot may be entitled to salvage in Great Britain; French Pilotage Decree, 12th December, 1806, Arts. 40 and 44, and 29th August, 1854, Art. 3

197. No one outside the Corporation of Pilots can undertake the work of a local pilot.

Nevertheless, fishermen and other seafaring persons, whenever, in the absence of pilots, they are requested to lend their assistance to take a vessel into port, or through a difficult passage, may accept the charge, if directly on coming on board they declare that they are not authorised pilots.

Cf. Mer. Ship. Act, 1894, §§ 590, 596, 597, and French Pilotage Decree, 29th August, 1854, Arts. 10, 11.

198. The Corporation of Pilots must give bail for the amount determined by the regulations.

There is a similar provision to this and the following article in many foreign States, *e.g.*, R. 318-320, P. 672. In Great Britain the remedy is against the pilot alone, and is limited in the case of Trinity House pilots, to the amount of his bond, *i.e.*, £100, by Mer. Ship. Act, 1894, § 620.

199. The Corporation of Pilots will be responsible up to the amount of the bail for damages caused by the want of skill or negligence of a pilot, the right to further relief against the latter being reserved.

P. 672, R. 247, 320.

See note to preceding article.

200. The employment of a pilot may be declared compulsory by the Government in harbours, roadsteads, and channels in which it is considered necessary.

See note to Art. 201.

201. A pilot who is in charge of a ship has the right to fix the course, and to order any manœuvre of sails, anchors, ropes, moorings, and whatever else relates to the safety of the vessel.

As already pointed out in the note to Arts. 66 (2) and 107 (*ante*), the local pilot is subordinate to the captain and officers; but, in consideration of these two articles, it may be argued that when he is employed compulsorily, under Art. 200, his position is defined by Art. 201, and that, in that case, and that case only, he supersedes the captain in the direction of the ship, though still remaining subordinate to him and other officers in matters of discipline; in fact, that he is *pro hac vice*, and for the particular purpose of directing the ship, a person authorised in the terms of this Code (see Art. 37, *ante*) to command a merchant ship—but see Art. 107 (*ante*). If so, the Italian law of Compulsory Pilotage, and the exemption to the owners of a ship accruing from the employment of a compulsory pilot, would be similar to the law of England and Germany (G., 738), and not, as deduced from Arts. 66 and 107, to that of France and other places mentioned in the note to Art. 66. But there have been several recent decisions which settle that the law of Italy is similar to that of France and Belgium, etc., inasmuch as it is decided that the position of the commander towards third parties is governed by Arts. 496 and 504 of the Code of Commerce, and that the above Art. 201 of the Mer. Mar. Code only concerns his relations with his own owner, and are only police and administrative measures, which would probably free the commander from any penal or *quasi* penal consequences of an act which was in fact that of the pilot, C.A., Genoa, 28, 1, 95, 11 R.I.D.M. 377, 23, 2, 97, 13 R.I.D.M. 207; C.C., Naples, 10, 5, 82, Foro It., 1882, 530; C.A., Venice, 27, 10, 81; Temi V., 1881, 570; C.C., Turin, 13 R.I.D.M. 819. Two things are, however, to be noted: (1) That the decisions are, with the exception of those of Naples and Turin, not those of a final Court of Appeal in any part of Italy, and that the decision of a final Court of Appeal in one province does not necessarily govern decisions in other parts of Italy. (2) That in one of the Genoese cases the pilotage was not compulsory, and that, therefore, the observations on the point are *obiter dicta*, and that in the other, which was a case arising out of the stranding of a vessel in the Straits of Yenikale, the case was not argued upon the position of a pilot there (see the *Halley*, L.R. 2, P.C. 193; the *Augusta*, 6 Asp. 58, 161; the *Agnes Otto*, 12 P.D. 56; the *Guy Mannering*, 7 P.D. 132), but on his status in Italy, and also that there was considerable evidence of at all events contributory negligence on the part of the commander in attempting the passage without lighten-

ing when from signals made before the pilot came on board he knew he had barely enough water to float him through. In the other cases cited it does not appear if the pilot was compulsory or not. The question cannot, therefore, be considered as set at rest. The law rests on the general proposition of *Respondeat Superior* (see Civil Code, Art. 1,153, *post*). Certainly the reasons given at the time the new Code came into force for Art. 663 were that it was expressly intended to exonerate the owner and master in the case of a compulsory pilot being to blame (see *Codice Marittimo, Cogliolo* and *Sraffa*, note to Art. 663). It was also so decided by the Corte de Cassazione of Florence prior to these Codes, 27, 3, 76, Annal, xi., 411.

202. Pilots may not leave ships committed to their direction before they are anchored and placed in safety in the place of their destination, and, when the ships are outward bound, until they are outside all dangers.

Cf. Mer. Ship. Act, 1894, § 606 (*l*), French Pilotage Decree, 12th December, 1806, Art. 35.

203. Captains and skippers who wish to keep pilots on board after they have passed beyond the dangers, and as long as they remain in sight of the anchorage, must give them the daily pay due for the service, as laid down in the tariff referred to in Art. 195.

Cf. Mer. Ship. Act, 1894, § 594, and for France, local regulations, *e.g.*, for the Seine, Art. 224.

204. The special service in each port, and the pilotage of tug-boats, will be settled in each separate locality by special regulations.

CHAPTER VI.

General Provisions.

205. The charges to which Arts. 159, 170, 174, 175, 176, 177, 178 and 191 refer, will be repaid on the note of the maritime authority, and are rendered executory as in the last paragraph of Art. 56.

206. In case of stranding, shipwreck, fire, or other extraordinary circumstance urgently requiring the assistance of the authorities, the port office may requisition the labour of seamen, boatmen, labourers, porters and any other workmen,

and such persons may not refuse, under the penalties prescribed by this Code.

Similar power in case of stranding or distress is given to the receiver of wreck in Great Britain by §§ 511-513, of the Mer. Ship. Act, 1894.

TITLE IV.

Maritime Law in Time of War.

CHAPTER I.

Acts of War which may be Exercised by Merchant Vessels.

ART. 207. No merchant vessel is allowed to attack an enemy, make a prize, search a vessel or exercise acts of war, except in the cases pointed out in the following articles.

As a "counsel of perfection" this is in accordance with the law of nations generally; that is, that if the private vessel or person making a capture be himself captured by the enemy, he may be treated as a pirate. But in England, at all events in our great wars, anybody was deemed justified in *attacking* the enemy, but the captured property was a "*Droit* of Admiralty," and, as such, the office of Lord High Admiral being in commission, belongs to the Crown in its office of admiral, and has, when the captor was first attacked, been granted to the actual captors on their petition (see Twiss, *Law of Nations in Time of War*, §§ 190, 194; now enacted by § 39, Naval Prize Act, 1864).

The right to recapture British property or the property of allies, the *San Bernardo*, 1 C. Rob. 178, is quite independent of a commission or letter of marque, the *Helen*, 3 C. Rob. 228; the *Progress*, Edwards, 215.

208. The fitting out of privateers is abolished; nevertheless, with the exception of the engagements agreed to by the state in the convention of Paris of 16th April, 1856, the fitting out of privateers against a power which has not entered into the convention or which has withdrawn from it, may be allowed by way of reprisals against captures which have been made of vessels belonging to the national mercantile marine.

In this case the conditions on which letters of marque will be granted, and under which privateering will be carried on, will be determined by royal decree.

On this head, if the belligerent power has not given up the right to make prizes, those who fit out national vessels may, on request being made to the maritime authority, obtain

leave to increase the arms, stores and crews beyond their ordinary amount.

The first paragraph is a reading of the obligations of the Treaty of Paris not likely to be accepted by Great Britain. True the signatories of the treaty are debarred from using privateers in warlike operations *inter se*, but can use them against other States quite independent of reprisals.

The second paragraph is in accordance with the universal practice of civilised nations.

There is nothing to prevent a British vessel carrying what arms or crew she likes, unless she comes under suspicion of being engaged in the slave trade, or is fitted out in violation of the Foreign Enlistment Act, 33 and 34 Vict., c. 90.

209. Merchant vessels which are attacked by ships even of war may defend themselves, and make captures, as well as assist in the defence of other national ships or allies that are attacked, and assist them in making captures.

R. 380.

See Arts. 207 (*ante*), and 220, (*post*).

Probably no State would deny the right of self-defence at sea. The Codes of most countries make special provision for wages and medical expenses of members of the crew who are injured in defending the ships, B. 58, F. 263, as amended in 1885, H. 424-427, I. 537-539, S. 644-645; but the Russian Code and this one are the only ones which expressly recognise the right to compensation or a payment in the nature of salvage as well. The Russian Code lays down the duty of defending the ship, and whilst not allowing merchant vessels to attack even an enemy, make special arrangements for mutual agreements for defence and for prize salvage in case the attacking vessel is captured.

210. If an enemy's ship attempts to make a capture in sight of the shore of the State, then, over and above the steps taken by the military forces to repel the attempt, it shall be lawful for any citizen to fit out armaments to go to the assistance of the vessel attacked.

If the ship which is attacked is saved, these persons have as prize money a share of the property salved, which is determined, if the parties cannot agree, by the proper maritime authority.

The first clause of this article appears to be a necessary corollary to the universal right of defence recognised by the preceding article, but it would also appear to recognise the right of any private individual on shore to wage war against invaders.

As to the latter clause, see note to Art. 208 (*ante*).

Chapter II.

Captures by Ships of War.

211. The capture and making prize of the enemy's merchant vessels by ships of war belonging to the State will be abolished by way of reciprocity towards any power which adopts similar treatment in favour of merchant vessels.

This reciprocal treatment may result from municipal law, diplomatic conventions, or declarations made by the enemy on the first outbreak of war.

That all nations should adopt this rule, and that private property at sea should be treated just as it theoretically is treated on shore has long been a dream of States possessing much commerce but insufficient means of defending it, but is not likely to be generally adopted so long as some nations are more powerful at sea than others. Even if adopted, such a rule would probably soon become ineffective, as those States powerful at sea would declare a blockade of the enemy's coast, or extend the doctrine of contraband, and so destroy the trade not only of the belligerent but of neutrals, as witness the case of the rice ships in the last Franco-Chinese war. It is, however, fair to say that it was observed in the war between Italy and Austria in 1866 (see Lushington, *Naval Prize Law*, p. ix.), and see paper read for discussion at meeting of International Law Association, Buffalo, Rep. 1899, pp. 66, 237.

212. The capture and confiscation of contraband of war are excluded from the operation of the previous article, and in this case ships which commit a breach will be treated similarly to neutral vessels which commit a breach of neutrality.

Capture and confiscation for breach of a blockade which is effective and notified are also excluded from the operation of the above article.

See note to last article.

213. The rules to be followed by the commanders of vessels which take prizes will be laid down by a royal decree, or by the order of the commander-in-chief of a fleet, squadron, or naval division, when regular instructions cannot be received in time.

It has been usual in Great Britain to issue a Prize Proclamation at the commencement of a war, but now the Naval Prize Act, 1864 (27 and 28 Vict., c. xxv.), and the Prize Proclamation of 1866 govern the matter.

CHAPTER III.

Treatment of Ships and Merchandise Belonging to Neutrals.

214. Whenever an enemy's ship is captured, if there is in its cargo merchandise which is the property of a neutral, this must be carried to the place into which the prize is carried, and then placed at the disposal of its owner, unless it has to be treated as of the nature of contraband, or the ship has been surprised in the act of breaking a blockade.

This is practically Art. 3 of the Declaration of Paris, and is, in fact, the general Prize Law of England, derived from the Rules of Oléron and the Consolado del Mar, that the character of the ship did not infect the goods, contrary, on this point, to that of both France and Holland at different times, under the varying pressure of war and interests of neutrality.

215. Neutral vessels laden in whole or in part with things of the nature of contraband of war, and going to the country of an enemy, will be captured and brought into a port of the State, where the ship and contraband merchandise will be confiscated, and the other goods left at the disposal of the owner.

If the war ceases before the vessel is condemned she and her cargo will be restored to the owners, but, the seizure being lawful, without compensation, the *Dœlwijh*, 8, 12, 96, *Italian Prize Court* 12, R.I.D.M. 601.

The general law of prize on this point appears to be very doubtful. If there is a treaty existing between the capturing belligerent and the neutral not to carry contraband of war, then the captured vessel would be good prize, otherwise, as there is nothing *malum in se* in carrying contraband, it would appear not to be so, but if the ship and innocent goods belong to the same person as the contraband goods, they would share the same condemnation. In ancient times it would appear that contraband was not confiscated, but pre-empted by the capturer (see French Ordinance of 1584, Art. 69). False or fraudulent papers, or a fictitious destination, involve the ship in the fate of the contraband cargo; it therefore appears that the Italian law is stricter as to the ships and more lenient as to contraband cargo, than the ordinary law of prize. A question will no doubt arise in the first great naval war, whether, as by the Treaty of Paris, the neutral flag covers enemy's goods, such goods, in themselves innocent, are still free when the neutral ship herself is confiscated by reason of other contraband goods on board, or for other reasons.

216. Unless otherwise agreed by treaties or special declarations made at the commencement of hostilities, the

following articles are declared to be contraband of war: Cannons, muskets, carbines, revolvers, pistols, swords, as well as other firearms, whether such as can be carried, or of any other description, munitions of war, military implements of all descriptions, and generally all things which, without manufacture, can be at once used for fitting out naval or military forces.

This is a much more limited definition of "contraband" than that recognised in England, as in this country are included ordinary provisions when bound to a naval port, the latter a limitation very difficult to make now, with the improved internal means of communication. Also, we include in the category of contraband, public officials or servants of the belligerent, except ambassadors, enemy's despatches, except those to an ambassador in a neutral State, and ships going to be employed in the military or naval services of the enemy, and in the recent Franco-Chinese war the French claimed to extend it to rice going to the northern ports of China which were not arsenals. Seeing how large a proportion of our food supply is imported, it would appear to be very strongly the interest of Great Britain to resist this extension.

217. Ships under a neutral flag taken in the act of breaking a blockade, which is effective, and has been duly announced, will be captured and confiscated with the goods which are laden on board them.

So here, the *Panaghia Rhomba*, 12 Moore P.C. 168; indeed both Great Britain and the United States consider a vessel bound to a blockaded port as breaking the blockade (Phillimore, *International Law*, vol. iii., §§ 304, 308).

218. Neutral vessels under the convoy of ships of war will be free from any (right of) visit. The declaration of the commander of the man-of-war will suffice to authenticate the flag and the (nature of the) cargo of the ships in the convoy.

Not so here, the *Maria*, 1 C. Rob. 343, the *Elsebe*, 5 C. Rob. 176. Indeed, any resistance to right of search, even on the part of the convoying ships, justifies detention of the whole convoy.

Chapter IV.

Recaptures, Legalisation of Captures, Confiscations, and of the Judicial Proceedings Relative Thereto.

219. Whenever a merchant or national ship is captured by the enemy, and is recaptured by a privateer, it will be restored

to the owner, he paying one-fifth of the value of the things recaptured if the prize has been for twenty-four hours in the hands of the enemy, and one-tenth if the recapture has taken place within the first twenty-four hours.

If a ship captured by the enemy has been carried into their ports, the regulations established for other prizes made from the enemy are to be followed. If a merchant vessel, whether national or belonging to allies, has been captured by the enemy, and is recaptured by a man-of-war, she will in all cases be restored to her owners without any salvage.

For the differing practice of different States on this point see Twiss, *Law of Nations* (*War*), §§ 174, 175.

In England prize salvage to ships of war is one-eighth, and in special cases up to one-fourth of the value of the prize (Naval Prize Act, 1864, § 40), and probably would be the same by proclamation in the case of privateers, if letters of marque were issued. The twenty-four hours' possession by the enemy has been generally recognised as divesting the original owner of his title, that is, that the capture is consummated by twenty-four hours' possession, but the rule is not in the present Prize Act.

220. If a prize that has been made by the enemy be recaptured by the captured crew, they cannot demand anything beyond a bounty at the discretion of the prize commission, to which Art. 225 refers.

See note to Art. 208. They have in this country a *locus standi* in court, and will be liberally rewarded, the *Two Friends*, 1 C. Rob. 271; the *Beaver*, 3 C. Rob. 293.

221. Merchant ships, both native and foreign, freighted on account of the Government, which are recaptured by a man-of-war after they have fallen into the hands of the enemy, will be restored to the owner, and he will not be bound to pay any salvage.

If the vessel (so) freighted be retaken by a national merchant ship, there shall be due to the latter a salvage chargeable on the national Treasury equal to one-fourth or to one-sixth respectively, of the value of the things recaptured, according to the different cases provided for in the first part of Art. 219.

It would appear very doubtful, on principle, whether any legal claim for salvage of Government property could be supported in Great Britain; whilst the twenty-four hours rule was in force, before that period had elapsed the property still remained in the Crown, and, after it had

elapsed, the property would vest in the recaptors on behalf of the Crown; but it was decided in the *Betsy*, Hay and Marriott, p. 80, that Government property recaptured by a King's ship was liable for salvage, and it would appear to be *à fortiori* the case if the recapture were made by other persons. The first of these clauses disentitles the crew of a ship of war to salvage in such a case.

222. If a ship which is captured by the enemy and subsequently abandoned, whether in consequence of stress of weather or other accident, comes into the power of (Italian) subjects, it will be restored to the owner, on payment to the salvor of the salvage expenses and of the salvage reward decreed by Art. 134. The regulations of Arts. 130, 131, 132 and 133 will be observed in reference to the salvage operations, the declaration and sale of the things salved, the publication of advertisements, and the time during which claims by any person as owner or otherwise may be preferred, and for the giving up and appropriation where no claims are made to such goods.

In Great Britain the law is that the case is treated not as one of derelict, as the owner has not voluntarily abandoned; nor as a case of military salvage, as there is no adverse possession; but as an ordinary case of civil salvage, the amount awarded being always discretionary, and not so limited as by Italian law, and this seems to be the old law of the Consolado del Mar and of the French Ordinances of 1681 (see Phillimore, *International Law*, vol. iii., §§ 409, 424; Wheaton, *Mar. Capture*, ch. viii., §§ 25, 26). The case, however, is different if the vessel comes into the hands of neutrals, for they admit the title of the captor, and therefore restore to him on payment of salvage (Phillimore, vol. iii., 425; Wheaton, *Mar. Capt.*, ch. viii., § 26; the *Mary Ford*, 3 Dallas, 188).

223. As soon as a vessel which has been made prize of or captured has arrived in port, the commander of the vessel making the prize or capture must make a detailed declaration of what has happened to the maritime authority, and deposit with the same authority the papers relating to the prize or capture.

If the vessel making the prize or capture be a man-of-war, the commander will send his papers, with the report relating to the affair, direct to his superior officer, without the delay of forwarding it through the maritime authority.

Detailed instructions to captors as to their duties on bringing prize vessels into port are given in the Naval Prize Act, 1864 (27 and 28 Vict.,

c. 25), §§ 16 and 37, and penalties for breach of duty in this respect are laid down in the Naval Discipline Act, 1866 (29 and 30 Vict., c. 109), §§ 38-42.

224. Where the vessel made prize of or captured is recovered in a foreign port the depositions and papers will be forwarded to the consular official, who will discharge all the duties in regard to prizes which are entrusted to the maritime authority.

This can only apply in the case of an ally, as the vessel could not legitimately be recaptured in a neutral port.

225. Legal proceedings in regard to the lawfulness of a prize and for the condemnation of it will be carried on before a special commission, instituted by royal decree, according to rules prescribed by its orders.

The Prize Jurisdiction of the British Empire was vested by the Naval Prize Act, 1864 §§ 3, 4, 5, in the High Court of Admiralty, and all Courts of Admiralty and Vice-Admiralty, with an appeal to the Judicial Committee of the Privy Council. The Appellate Jurisdiction Act, 1876, § 23, specially provides for the continuation of the functions of Vice-Admiralty Courts. By recent legislation the High Court of Justice in England is the Prize Court. The causes are assigned to the P. D. and Ad. Div., and the appeal lies to the Privy Council, 54 and 55 Vict., c. 53, § 4, and the practice is regulated under the Prize Courts Act, 1894 (57 and 58 Vict., 39).

226. Whilst proceedings to establish the legality of the prize and for its condemnation are pending, the maritime authority, checked by the capturer and captured, or their representatives, and by a person appointed by the customs, will proceed to make an inventory of the whole of the cargo and other things on board the ship which is made prize of or captured, and will make provision for their safety, or, if they cannot be preserved, for their public sale.

The British regulations on this head are contained in the Nava Prize Act, 1864, §§ 24-29, 31.

227. These proceedings to declare a prize lawful do not apply to vessels of war which are captured, which cases will be at the sole determination of the Minister of Marine.

Whenever the prizes referred to in this article are made by privateers or merchantmen, these will receive as prize money a sum equal to one-fifth value of the captured vessel less her arms and munitions.

The captor has, in addition, a right to be repaid for the damages he has sustained in making the capture.

Cf. Naval Prize Act, 1864, §§ 22, 42. Apparently the case of a man-of-war being captured by a merchant vessel is not contemplated by this statute, but prize bounty for the capture of a man-of-war, if allowed at all by Royal Proclamation, is to be a function not of the value of the ship but of the number of the crew, *i.e.*, £5 per head for each member of the enemy's crew on board at the commencement of the engagement. Having regard to the enormous increase in size and value of ships of war of late years, and the decrease in the number of the crews of the large vessels, the Italian scheme seems, now at all events, far the most advantageous to the captors.

Chapter V.

Payment and Apportionment of Prize Money.

228. If the prize commission has pronounced a sentence for the sale or forfeiture of the prize, the maritime authority, having first issued the customary advertisements and given notice to those concerned, will proceed to a public sale, and will place the proceeds in the Seamen's Deposit Bank [*Cassa dei Depositi della gente di mare*].

Cf. The Naval Prize Act, 1864 (27 and 28 Vict., c. 25), §§ 18, 29.

229. The proceeds, less the law expenses and those of the payment out, will be apportioned as follows:—

If the prize be made by a man-of-war, one-fifth will be put aside for the benefit of the Mercantile Marine Sick Fund, and used in the manner prescribed by the regulations; two-fifths will then be distributed amongst the crew or crews (engaged), in the shares which shall be established by royal decree, and the residue will be incorporated with the public revenue.

If the prize or capture is made by privateers or merchantmen, the one-fifth will be put aside for the benefit of the Sick Fund, and the residue apportioned in accordance with the fitting-out agreement and ship's articles.

Failing any agreement, one-half of the four-fifths (two-fifths) will be considered the share of the crew or crews, and the other half that of the owners; the first half will be distributed in the manner established by the regulations, and the second in proportion to the respective interests of the owners.

In Great Britain the crews of men-of-war get the whole proceeds, less law costs and 7½ per cent., 5 per cent. of which goes into a general fund and 2½ per cent. to the agent (Naval Agency Act, 1864, §§ 13, 17, 19).

In the case of privateers it would no doubt be agreed between owners and crews how they should share, but in the case of non-commissioned captors or re-captors, the Court of Admiralty looks favourably on the persons actually engaged, but there is no hard-and-fast rule of distribution (the *San Bernardo*, 1 C. Rob. 178; the *Two Friends*, 1 C. Rob. 285), though such captors have no legal claim on the captured property, it being a "*Droit* of Admiralty" (27 and 28 Vict., c. xxv., § 39).

230. Nothing is set aside for the benefit of the Sick Fund from the sums given under the name of salvage by Arts. 220, 221, 222.

In England, prize salvage (and civil salvage to men-of-war) is subject to the same deductions as other prize money, §§ 17, 18, Naval Agency Act, 1864, for which see note to Art. 229.

231. National vessels of war in sight when a prize is made by a merchant vessel have a right to a fourth of the value of the prize; the other three-fourths enure to the benefit to the capturing vessels.

For the purpose of proving his presence at the engagement, the commander must enter the fact in his log, stating the day and precise hour at which the different incidents of it happened, especially the surrender of the prize; and shall specify besides, the geographical position of the place in which the things happened, and all other circumstances relating to it.

In British prize courts men-of-war in sight are deemed to be co-operating in the capture, for that is their duty—unless it can be proved that in fact they had no such intention—and so share on equal terms and pay their proportion of expenses (Phillimore, *Int. Law*, vol. iii., § 389 B; *cf.* 27 and 28 Vict., c. 26, § 36).

232. Privateers in sight at a capture made by another privateer or merchantman, and which have tried to assist, have a right to one-half of the share which would have been theirs had they actually taken part in the engagement.

In this case the captain must, in addition to the declarations mentioned in the preceding article, also state the manœuvres he executed to close with the enemy.

Under such circumstances a privateer would take her full proportionate share, but she must prove that she actually co-operated, as there is no such duty laid on her as on vessels of war (see note to previous article, and Phillimore, *Int. Law*, vol. iii., §§ 387-389).

233. Privateers and merchantmen in sight at a capture by a man-of-war have no right to any share in the products of the prize.

Nevertheless, if they take part in the engagement, or in preserving the convoy whilst the man-of-war is engaged, they have a right to be remunerated out of the products of the prize in proportion to the service rendered, which will be determined by the Minister of Marine. Whenever such privateers or merchantmen are required by the commanders of ships of war to assist them against the enemy, they have a right to the prizes that are made in proportion to the numbers of their crews, without prejudice to whatever indemnity may be due to them for damages they have sustained.

In Great Britain as to the privateer, it makes no difference whether the actual captor is a man-of-war or another privateer; she will be entitled to share if actually co-operating. The uncommissioned merchant ships have no *right* to prize money in any event (see note to Art. 229, *ante*).

234. If it happens that one or more ships are detached from a fleet, squadron or division at anchor to cruise or for other operations of war, and that these latter make a prize in sight of the fleet, squadron or division, then one-third of the amount reserved for the crews is set aside for the actual captors, and the other two-thirds are distributed amongst all.

If the fleet, squadron or division is under way and in sight, the prizes, whether made by the detached ships or by the fleet, squadron or division will benefit all alike.

If the squadron or ship is really engaged in detached service, the fleet, except the flag officer, will not share; but, if still acting in connection with the fleet, they will, according to the law of British prize courts (Phillimore, *Int. Law*, vol. iii., § 398; see the *Arc-en-Ciel*, Marsden's *Ad. Cas.*, p. 171, the *Touraine*, *ibid*, 169).

235. When a prize is made by a man-of-war detached from the fleet, squadron or division to which it belongs, and out of sight of the same, there will be assigned to the commander-in-chief, or to the officer of highest rank of the fleet, squadron or division, one-half of the share to which they would have been entitled in accordance with their rank if the prize had been made in sight of the fleet, squadron or division.

See note to Art. 234. British flag officers, under the proclamation of

19th May, 1866, divide one-thirtieth of all prize money arising from captures made by ships under their command, but the principle does not apply to captures from a destruction of pirates nor to civil salvage awards, but it does to slave-trade captures.

236. If the capture be made by a battery or fortress of the State, the rules prescribed for Prizes made by men-of-war are applicable.

Whenever a prize is made by a merchant vessel within range of the guns of a fortress or battery on the shore, and the latter has fired on the enemy, the prize-money will be divided as if three-fourths were owing to the naval operations and one-fourth to the fortress or battery.

In Great Britain the law of prize does not apply to land forces at all, but if a grant of bounty is made to land forces, it falls within the jurisdiction of the Prize Court (3 and 4 Vict., c. 65, § 22), and also when a capture of Government property is made by joint naval and military forces (27 and 28 Vict., c. 25, § 34; see the *Dordrecht*, 2 C. Rob. 55; the *Banda and Kirwee Booty*, L.R. 1, Ad. and Ecc. 109; the *Army of the Decan*, 2 Knapp 114; Twiss, *Law of Nations*, *War*, ch. iv., § 71).

237. Any person who is sent away on duty from a captor, continues to be considered as part of her crew, and will share in any prize that is made as if he were on board at the time.

It appears from § 42 of the Prize Act, 1864, that only those actually present share in the bounty allowed for capture of a man-of-war, whilst those absent on duty would also share in the proceeds of merchant prizes (Prize Proclamation, 1886).

238. The heir of a person who dies during an engagement from wounds received in the same, has the share of prize-money which would be due to the person from whom he inherits.

239. Persons landed on account of illness or wounds received in battle have a right to one-half shares in prizes made after they are landed, so long as they remain a part of the crew of the captor.

See note to Art. 237.

240. On the completion of the proceedings referred to in Art. 228, the authority there mentioned will transmit all matters to the president of the Prize Commission.

One of the commissioners will be appointed by the president, and will draw up a statement of the apportionment of the

prize or forfeiture, and will order it to be published in the official gazette of the realm.

Cf. Naval Agency and Distribution Act, 1864, §§ 13-18, 21.

241. Objections to the scheme of apportionment must be made within a month from the decision of the commissioner.

242. The shares of prize-money which are not claimed by those who are entitled to them, within four years, commencing from the day on which the scheme of apportionment is published, will go to the benefit of the Sick Fund.

Under the former Prize Acts, unclaimed prize-money was after six years paid over to Greenwich Hospital, but could be recovered on good cause being shown; at present by § 17 of the Naval Agency Act, 1864, it is paid over to the Naval Prize Fund, and then, at discretion, to the Consolidated Fund, and, apparently, on good cause shown, may be recovered at any time.

Chapter VI.

Reprisals [*Rappresaglie*].

The context of the following articles shows that the word here used would be more aptly paraphrased by "Embargo" than translated by "Reprisals," which, in England, signifies a state of things antecedent to and not necessarily leading to war, by which the rights of subjects against a foreign State or individual may be enforced.

243. Merchant vessels of a hostile State, which are found in the harbours or on the coast of the realm at the moment when war is declared, will be free to sail within a certain time, unless the Government, under special circumstances, does not think fit to prescribe any term for their departure.

For this purpose, the above-named ships will, on their departure, be provided with safe-conducts (passes) for their return to their own country, nevertheless, there may be an *embargo* or sequestration of such ships, by way of reprisals, when the enemy has, on the outbreak of hostilities, captured national merchant ships found in his ports, or has levied requisitions within the provinces of the realm.

It has always been held that there is a right to lay an embargo on enemies' ships and goods at the outbreak of war, and this right has been exercised in Great Britain down to the outbreak of the Russian war, in 1854, when six weeks were allowed to Russian ships in port, or which had sailed from a port before the outbreak of war, to clear out, and they were

further free from molestation on the voyage. Order in Council of 29th March, 1854, France and Russia pursuing the same course.

244. Ships and goods laden on them which are so sequestrated, being enemy's property, may, according to circumstances, either be detained till the termination of hostilities or be declared good prize.

In the latter case, the proceeds will be used to indemnify *pro rata* in respect of their losses the subjects who have been injured by the enemy, the rules and procedure hereinbefore enacted being observed, both for the condemnation of the prize and the payment out of the proceeds.

It seems that this indemnification of injured subjects has been the object aimed at by an embargo or reprisals *prior* to hostilities (see Twiss, *War*, § 60, *ad fin.*), but an embargo at or after the declaration of war would in Great Britain enure like other prize to the Crown and its grantees.

245. The crews of merchant ships which are arrested, captured, or forfeited, will in all cases be set free; private persons of hostile nationality can only be detained by way of reprisal when the power of which they are subjects has imprisoned the crews or seamen of national merchant vessels or of an allied power.

The crews of merchant prizes are generally treated as prisoners of war (see the *Mary*, 5 C. Rob. 200, Perels, *Droit Mar. Int.*, p. 222, Ortolan, *Diplomatie de la Mer*, vol. ii., p. 35), and, this being so, the latter part of the article would appear likely to control the liberality of the earlier part.

Chapter VII.

Neutrality of the Country in regard to Belligerent Powers.

246. In case of war between powers with regard to which the State is neutral, their privateers or war-ships with prizes will not be received in the harbours, roadsteads, or coasts of the realm, except in case of being driven in by distress.

They will leave as soon as the danger has ceased.

No ship of war or privateer of a belligerent may remain more than twenty-four hours in a harbour or roadstead, or off the coast of the realm or adjoining it even when alone, except in case of being driven in by stress of weather, damage, or the

want of supplies necessary for the safe prosecution of the voyage.

In no case will the sale, exchange, whether in money or kind, or gift of things captured, be permitted in the harbours, roadsteads, or shores of the realm.

This and the succeeding articles practically embody the practice of neutral States in recent times, and especially during the Franco-German war (see Phillimore, *Int. Law*, vol. iii., § 168).

247. Ships of war of a friendly power, even when it is a belligerent, may enter and remain in the ports, roadsteads, and off the shores of the State, provided that they are only employed in scientific pursuits.

This qualification of the preceding articles is not likely to be of much practical value when deep sea grapplers can catch deep sea cables.

248. In no case can a belligerent vessel make use of an Italian port for warlike purposes or to obtain arms or munitions.

Nor can they under pretence of repairs undertake works of such a nature as to increase their capacity for war.

See note to Art. 246.

249. Ships of war and privateers of a belligerent will not be supplied except with provisions and stores, and means for repairs actually necessary for the support of their crews and the safety of their voyage.

Ships of war and privateers of a belligerent which want to take in coal cannot receive supplies of it until twenty-four hours after their arrival.

The provision as to coal usual during the Franco-German war was that a ship of war should have "so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination, and no coal shall again be supplied to any such ship of war in the same or any other port, roadstead, or waters, subject to the territorial jurisdiction of Her Majesty without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters, as aforesaid" (Phillimore, *Int. Law*, vol. iii., § 168).

Which rule seems singularly short-sighted for Great Britain, as it makes her numerous coaling stations a source of weakness. Say two belligerent vessels, one of which is British, find themselves together in the River Plate, and short of coal, the British vessel can only take enough to take her to the Falkland Islands, her nearest port; the other

vessel can fill up to go across the Atlantic, and meets the British vessel at an enormous advantage outside, as she has only to play a waiting game to win the battle.

250. When ships of war, privateers, or merchant vessels of two belligerents are found at the same time in a harbour, or roadstead, or off the shore of the realm, an interval of at least twenty-four hours must be required between the departure of any ship of one belligerent and that of any ship of the other.

This interval may be increased, according to circumstances, by the maritime authority of the place.

See note to Art. 246.

251. A capture, or any hostile operation between ships of belligerent States in the territorial waters, or in waters adjacent to islands belonging to the realm, will constitute a violation of territory.

This is universally accepted now (Phillimore, *Int. Law*, vol. iii., § 161, *et seq.*).

Part II.

Title IV.

Disciplinary Powers.

450. Breaches of discipline can be punished as follows:—

451. (4) By captains and skippers over their own crews and passengers.

452. The offences include simple disobedience, negligence on watch, failing to go on watch, drunkenness when not disorderly, absence without leave when not exceeding twenty-four hours, smuggling wine or other fermented liquor on board, failure to treat superiors with respect, negligent loss of seaman's ticket and the like.

453. The punishments allowed are (1) stoppage of leave for one to five days. (2) Extra watch. (3) Stoppage of grog for one or two days. (4) Confinement for one to ten days. (5) Stoppage of pay for one to thirty days, and fines of 1 to 100 lire. (6) Exclusion from the cabin table for one to ten days. (7) Prohibition to be on deck for more than two hours for a term not exceeding five days.

457. Captains and skippers must state in the log the offences and punishments.

The remainder of the Code relates to the internal discipline of Italian merchant vessels, and not being of general interest is not given here.

APPENDICES.

ARTICLES OF THE SEVERAL CODES NOT STRICTLY RELATING TO MARITIME MATTERS, BUT WHICH ARE REFERRED TO IN THE PRECEDING TRANSLATION.

APPENDIX A.

COMMERCIAL CODE.

BOOK I.

TITLE I.

Commerce Generally.

Art. 1. In commercial affairs, the Commercial Law is to be observed, when this is silent, Mercantile Customs or Local or Special Customs are followed. Failing these the Civil Law is applicable.

TITLE II.

Affairs Deemed Commercial.

Art. 3. The law treats as commercial affairs

. . . . . .

(13.) Undertakings for the carriage of persons and goods by land or water.

(14.) The building, purchase, sale, and resale of ships.

(15.) The purchase and sale of ships, apparel, and furniture, provisions, fuel, and other things used in fitting out ships for sea.

(16.) Maritime expeditions.

(17.) The engagement of persons to serve in vessels of the Mercantile Marine, and agreements for wages and pay of the crew.

(18.) Charter parties, berthing contracts, and other contracts relating to maritime commerce and navigation.

(19.) Insurances, including mutual ones, against the perils of navigation.

(22.) Brokerage.

7. The State, the provinces, and communes cannot acquire the character of traders, but they may perform commercial acts, and so far are subject to commercial law and custom.

TITLE IV.

Traders' Books.

Art. 21. A trader must keep a day-book, which shows his debts and credits day by day, his trading operations, his contracts, the acquisition and disposal of goods, and generally whatever he receives or pays on any account, whether civil or commercial, besides a statement each month of the amount used for his household expenses, independent of any other books which are used in commerce, but which are not imperative. He must also file letters and telegrams he receives, and keep copies in a letter-book of letters and telegrams which he sends.

22. A trader must also each year make out an inventory of his property, both personal and real, and of his debts and credits of whatever sort and from whatever source arising.

The inventory includes a balance-sheet and statement of profit and loss, and must be entered and signed by the trader each year in a special book.

23. The day-book and inventory book cannot be used until each page has been numbered and stamped by a Judge of the Tribunal of Commerce or by the Prætor of the place where the trader resides. On the last page of the above-named books and of the copy letter-book must be stated the number of pages which it contains, and this statement must be dated and signed by the Judge or Prætor, gratuitously. The day-book must be shown once every year to the Tribunal of Commerce or the Prætor and be visèed gratuitously immediately beneath the last entry. In communes where there is no Prætor the day-book may be visèed by a notary, who must state the fact in his register.

25. The above-mentioned books must be kept in order of date and consecutively, without blank spaces, interlineations or corrections in the margin. No erasures may be made, and if it is necessary to cancel anything, it must be done in such a way that the words struck out are clearly legible (See Art. 33, *post*, 500, *ante*).

26. Traders must keep their books for ten years from the date of their last notation and also letters and telegrams that they have received (See Art. 33).

27. Inspection of the books, inventories and files of letters and telegrams mentioned in Art. 21, cannot be required by a Court of Law except in cases of succession, partnership, bankruptcy and community of goods.

Inspection (in these cases) is had in the way agreed upon by the parties, failing agreement, by production in the registry.

28. The judge may, order on demand of one of the parties and also *proprio motu* during the progress of the suit, though it is not with reference to the matters mentioned in the preceding article, the production of the books to make extracts of those matters only which relate to the dispute.

He may also order the production of specified letters and telegrams relating to the said dispute.

TITLE V.

Brokers.

Art. 33. Everyone who carries on the business of a broker must keep the following books:—

(1.) A note-book with detachable leaves in which he must note in pencil, at once, every transaction effected by him, stating shortly the nature of the business and its essential conditions.

(2.) A day-book, paged, stamped and visèed as laid down in Art. 23, in which he enters with precision, day by day, without abbreviations or figures, all conditions of sales, purchases, assurances, negotiations, and speaking generally all business transacted through him. A broker must give the parties when the business is arranged a copy of the note in his note-book, and if requested a copy of the contract in full

as entered by him in his day-book, signed by him and also by the parties if they agree. There are special regulations for Stock Brokers.

The first paragraph of Art. 21 and Arts. 25 and 26 are applicable to Brokers (See Art. 44).

34. The judicial authority may require a broker to produce his books to compare the copies given to the parties with his note and original writing and may require suitable explanations from him.

TITLE VI.

Commercial Contracts, General Principles.

Art. 36. A bilateral contract between persons at a distance is not perfected unless the proposal is accepted within the time limited therein or within the time reasonably necessary for the exchange of proposal and acceptance, according to the nature of the contract and the custom of the trade.

The proposal may remain of full effect even if the acceptance is out of time if the proposer at once gives notice to the acceptor. When the proposer requires the contract to be carried out at once and no reply has been asked for and is not necessary according to the custom of the trade, the contract is perfected as soon as the other party begins to carry it out.

As long as the contract is not completed, both proposal and acceptance are revocable, but if the revocation impedes the performance of the contract after notice to the other party that it is undertaken, the person who revokes is liable in damages. Unilateral contracts are binding on notice of the fact to the party by whom the promise is given.

37. A conditional or limited acceptance is equivalent to a refusal of the proposal accompanied by a new proposal.

38. Whenever it is necessary to ascertain the fair price or price current of goods, merchandise, carrier's hire, freight of ships, premium of insurance, rate of exchange, price of the public funds or shares in undertakings, they are taken from Stock Exchange list, or from daily publications at the place where the contracts are to be performed, and failing this, then from those of the nearest place and proved in any other manner.

(See Art. 405, *post*. For the way in which the value of goods in which the government has a monopoly is arrived at see 15 R.I.D.M., 244.)

39. If the contract is made in money not legally or commercially current in the realm, and if the rate of exchange is settled, payment must be made in the currency of the realm at the rate of exchange at the time and place of payment, and if there is no exchange at the place then at the current rate at the nearest place, unless the contract contains the clause *effettivo* (actual) or other equivalent.

44. Commercial contracts and discharges are proved.

By deeds (*atti publici*).

By signed documents (*scrittore private*).

By brokers' notes signed by the parties in the manner prescribed in Art. 33.

By receipted bills.

By letters.

By telegrams.

By the books of the contracting parties.

By witnesses and, with the consent of the court, also in the cases provided for in Art. 1,341 of the Civil Code.

By any other means allowed by Civil Law,

The regulations laid down in Art. 1,314 of the Civil Code relating to the purchase and sale of real property remain of full force.

45. A telegram is treated in evidence as a signed document (*scrittura privata*) when the original is signed by the person described in it as the sender, or when it is proved that the original was given or sent to the telegraph official by the said person though not signed by him.

If the signature of the original is certified by a notary, the ordinary rules apply. If the identity of the person who signs or forwards the original is proved by the other methods prescribed by the telegraph regulations, evidence in contradiction is admissible. The dates on a telegram prove the day and hour of its dispatch and receipt at the telegraph office, saving proof to the contrary.

See Art. 628 (*ante*).

53. Where documentary evidence is required by this Code

oral evidence is inadmissible except in the cases where it is allowed by the Civil Code.

See Art. 421 and Art. 1,341, Co. Civ. (*post*), and Art. 604 (*ante*).

54. If a matter is one of trade for one only of the parties, all the contracting parties are for that matter subject to Commercial Law, except as to those provisions which relate to traders personally and except where other provisions are legally made.

See Art. 915 (*ante*).

58. The forms and qualities that are absolutely necessary in commercial contracts, the form of deeds to be executed for the exercise and preservation of rights, which derive their validity from them or from the execution and the consequences of these deeds are respectively governed by the laws or customs of the place where the business is done or where the deeds are executed except in the exceptional case provided for in Art. 9 of the Preliminary Depositions of the Civil Code for such as are subject to the same National Law.

See Art. 558 (*ante*), and Co. Civ. Art. 9 (*post*).

TITLE VII.

Sales.

Art. 62. The sale of goods "to arrive" naming the ship on board of which they are or should be, is conditional on the safe arrival of the ship named.

If the vendor reserves the right to give the name of the ship which carries or ought to carry the goods within a period limited by the agreement or by custom, the purchaser when the time has expired is entitled to demand the fulfilment of the contract or the payment of damages. In estimating the damages regard must be had to the time agreed on for delivery of the goods, or failing that to the time agreed on for giving the name of the ship.

If no time is fixed either by agreement or custom for giving the name of the ship, the purchaser has a right to have the time fixed judicially.

63. If on or after a sale of goods to arrive, a time is given for the arrival of the specified ship, and the time expires with-

out the ship arriving, the purchaser is entitled to cancel the contract or extend the time once more.

64. If no time for the arrival of the ship is agreed on, the usual time for making the voyage is understood.

In case of delay a time may be fixed by the Court having regard to the circumstances of the case, when that time has expired and the ship has not arrived, the contract is put an end to.

In no case can a longer term than one year from the day on which the ship sailed for the place where she ought to have received the goods be fixed judicially.

65. If the goods which are sold are transhipped in the course of the voyage from the specified vessel to another in consequence of an accident or unavoidable circumstance, the contract is not annulled, and the carrying ship is deemed to be substituted for the one specified for all purposes of the contract.

66. Damage sustained in the course of the voyage dissolves the contract if the goods are so deteriorated as to be useless for their purpose. In all other cases the purchaser is bound to receive the goods on their arrival at a reasonable reduction in price.

68. When the purchaser of a chattel does not perform his contract, the vendor may place the articles in a public warehouse, or if there is none, in a trading house of good repute on account of, or at the expense of the purchaser, or he may re-sell it.

The sale will be by public auction or at the price current, if the price of the thing is quoted at the exchange or in trade lists, through the intermediation of an official duly authorised for this class of business, the vendor preserving his right to be repaid the difference between the price received and that contracted for, and to be compensated for loss.

If the breach of contract is on the part of the vendor, the purchaser has a right to purchase the goods elsewhere, through the intermediation of an official duly authorised for this class of business on account of and at the expense of the vendor, and to be compensated for loss. A party to the contract who avails himself of these provisions must in any case give notice at once to other party to the contract.

71. The President of the Tribunal of Commerce, or in places where there is no tribunal, the Prætor, may, on the demand of vendor or purchaser, order that the quality and condition of the goods sold be ascertained by one or more expert surveyors officially appointed. The same order or a further one may direct the goods sold to be warehoused or attached in a public place, or kept in any other specified place, and if keeping the goods may cause serious injury may order a sale on account of whom it may concern on conditions laid down in the order.

Notice must be given to the other party, or his agent, if either of them are present of the precautions ordered by the President or Prætor before they are carried out; in all other cases notice must be given within the time settled by Art. 931 of the Code of Civil Procedure after the order is executed.

A purchaser who has not availed himself of the course prescribed by this article, will in case of a dispute be put to strict proof of the identity and defects of the goods.

See Art. 658 (*ante*).

TITLE IX.

Companies and Trading Societies.

CHAPTER I.

Companies.

SECTION VIII.

Regulations as to Civil and Foreign Companies.

Art. 230. Companies legally constituted in foreign countries which establish a branch office or agency within the Realm are subject to the provisions of this Code as to the deposit, and the registration, posting up and publication of the Articles of Association and Statute and of deeds which effect any alterations in either, and balance sheets, they must also publish the names of the persons who direct or manage these branches or in other ways represent the company in the State.

These persons are under the same liabilities to third parties as are laid down for the directors of National Companies. If the foreign Companies are of a different description from those

referred to in Art. 76 (*i.e.* Partnerships, Unlimited and Limited Liability Companies), they must comply with the regulations for the deposit and publication of the Articles of Association and of the Statute as Limited Liability Companies and their managers will be under the same liabilities to third parties as the directors of such Companies.

Foreign companies which have their principal places of business and carry on their business within the realm are considered to be native Companies and are subject even as regards the form and effect of their Articles of Association, even when entered into abroad, to all the provisions of this Code.

231. When the formalities prescribed in the preceding articles are complied with, they produce for such Companies the legal effect laid down for native Companies, and make the directors and representatives of any description in all cases personally and wholly liable for everything they do within the limits of their duties.

CHAPTER II.

Associations.

SECTION II.

Mutual Assurance Associations.

See Arts. 604 (*ante*) and 419 (*post*).

Art. 239. The object of a Mutual Assurance Association is to divide amongst the members damages occasioned (to one or more of them) by such perils as may be agreed on by the Association.

It constitutes, as regards third parties, a corporation [*ente collettivo*] distinct from the individuals composing it.

240. The existence of a Mutual Assurance Association must be proved by documentary evidence [*per iscritto*].

It is regulated by the agreements of the parties.

241. The Association is administered by certain of its members, whose appointment is temporary and may be revoked.

242. The rules respecting the responsibility of directors [*amministratori*], the publication of the deed of constitution [*atto costitutivo*], of the articles of association [*statuto*], of deeds

which make any alteration in either of them, and of the balance-sheets [*bilanci*], of public companies, and the penalties relating thereto are applicable to Mutual Assurance Associations.

The provisions of Art. 145 should be shown to be complied with by the said balance-sheets.

Art. 145 requires, in the case of Italian companies, that a quarter, and, in the case of Foreign companies, half of the premiums and profits should be invested in the Italian funds.

243. The members are only obliged to pay the contributions as arranged in the contract, and in no case are they liable to a third party except in proportion to the value of the article [*cosa*] in respect of which they were admitted into the Association.

244. A person who loses the thing in respect of which he was a member, ceases to be a member, except so far as he is entitled to be indemnified.

245. The Association is not dissolved by the suspension or death of a member.

The failure of a member may cause his exclusion.

TITLE X.

Bills of Exchange and Cheques.

CHAPTER I.

Bills of Exchange.

SECTION II.

Indorsements.

Art. 256. An indorsement [*girata*] transfers the property in a bill of exchange [*cambiale*] and all rights inherent thereto.

Indorsers are liable *in solido* to accept and pay a bill of exchange when due.

257. If the drawer, bearer, or indorser prohibits the transfer of a bill of exchange (*i.e.*, renders it not negotiable), by indorsing it "*non all'ordine*" (not to order) or with an equivalent expression, indorsements made in the face of such prohibition

only produce the effects of a surrender of the bill as against the person making the special indorsement.

258. The indorsement must be written on the bill, and dated and signed by the indorser. It is valid even if the indorser [*girante*] writes his name and surname only or his firm name [*ditta*] on the back of the document.

Every bearer has a right to fill in indorsements in blank [*girate in bianco*].

259. An indorsement accompanied by the words "*per procura*" (by procuration for), "*per incasso*," "*per mandato*" (by order of), "*valuta in garantia*," or their equivalents, does not pass the property in the bill of exchange, but authorises the indorsee [*giratario*] to demand payment, to protest it, and to sue upon it, and also to indorse it by procuration [*girarla per procura*].

If the indorsement is accompanied by the words "*senza garantia*," or their equivalent, the indorser does not contract the liabilities pertaining to bills of exchange.

260. The indorsement of a bill of exchange, when overdue, only has the effect of a surrender [*cessione*] of the bill.

See Art. 555, 592 (*ante*).

Section V.

Duplicates and Copies.

277. The acceptor (*prenditore*) of a bill of exchange has a right to obtain one or more duplicates from the drawer or bearer.

Every holder of a bill of exchange has the same right with respect to the person indorsing the bill to him and through previous indorsers, with respect to the drawer or person putting the bill in circulation.

See Art. 556 (*ante*).

278. Each duplicate must be an exact copy of the bill of exchange except the words "first," "second," etc. In default of this difference the duplicates are deemed to be distinct bills of exchange.

See Art. 556 (*ante*).

SECTION VII.

Payments.

295. The holder of a bill of exchange when he has received payment must surrender it receipted to the payer. In a case of partial payment the holder must note the fact on the Bill of Exchange and give a separate receipt.

If payment is made after the Bill is protested, the protest and also the return must be surrendered to the payer.

See Art. 557, 560 (*ante*).

SECTION X.

Actions on Bills of Exchange.

324. In actions on bills of exchange although they are commenced by a citation, the debtor can only raise defences as to form of Bill, of failure of the necessary conditions precedent to the action, or as to the particular plaintiff.

Such defences do not stay the action or judgment of the court if they are not definite, and of a nature to be quickly decided, and in any case unless founded on documentary evidence. If they require lengthened investigation they are deferred till after judgment and meanwhile execution issues or judgment for the amount is given, with or without security at the discretion of the judge.

See Arts. 555, 592 (*ante*).

As to the effect of this clause on an action on a bottomry bond. See 9 R.I.D.M. 73.

TITLE XI.

Contracts of Current Accounts.

Art. 347. An account current is closed and settled at the time agreed on or at the time fixed by the custom of trade, and failing that at the end of December in each year.

Interest runs on the balance from the date of the balance being cast.

See Art. 604 (*ante*); 421 (*post*).

TITLE XII.

Commercial Agencies and Commissions.

CHAPTER I.

Commercial Agency.

SECTION I.

Ordinary Commercial Agencies.

Art. 363. To enable him to prosecute the rights mentioned in the previous article (*i.e.*, his lien for services and expenses), the agent must give judicial notice to the principal of the amount due to him, with a demand of payment within three days and a warning that in case of default, proceedings will be taken to sell the goods affected by the lien.

The principal may defend and cite the agent to have the case heard within the time mentioned.

If the principal has no residence or address for service at the place of residence of the agent, the time for entering a defence is prolonged in accordance with Art. 147, Co. Pr. Civ.

When the time has elapsed or the defence been rejected, the agent without further formality sells the goods in accordance with Art. 68.

See Art. 68 (*ante*), and C.P.C. 147 (*post*).

SECTION II.

Agents and Representatives.

Art. 371. An agent must always deal in the name of his principal, and when signing must add to his own christian and surname the christian and surname and business of his principal, adding also "by procuration" or similar words.

Failing such statements the agent assumes a personal obligation, but third parties may also sue the principal in respect of things done by the agent in matters pertinent to, and necessary for the conduct of the business for which he is agent.

CHAPTER II.

Commissions.

Art. 380. A commission (*La Commissione*) has for its object the conduct of business on account of a principal in the name of an agent.

The natural rights and duties of an undisclosed principal and his agent (*committente e commissionario*) are the same as between other principals and agents (*mandante e mandatario*) with the differences pointed out in the following articles.

See Arts. 421 (*post*), 604 (*ante*).

381. The agent of an undisclosed principal is personally liable to the person with whom he has contracted as if it was his own business. The undisclosed principal has no right of action against the persons with whom his agent has made a contract, nor have these persons any right of action against the undisclosed principal.

See Art. 421 (*post*), 604 (*ante*).

Cf. *Durant & Co.* v. *Roberts & Keighley, Maxted & Co.*, 1 Q.B. [1900] C.A., 629.

TITLE XIII.

Contracts of Carriage.

Art. 388. A contract of carriage exists between the consignor or the person contracting to forward, and the carrier who undertakes in his own name but at the expense of another, or between any one of these persons and the actual carrier.

Carrier (*vettore*) is the name given to any person who undertakes to transport goods or to have them transported in any way.

The reciprocal duties of the consignor and undertakers of water carriage and captains and skippers are regulated by the 2nd Book.

389. The consignor must give a freight note (way bill consignment note) (*lettera di vettura*) to the carrier if he requires one.

The consignment note may be to order or to bearer.

The form and effect of an endorsement of a consignment note are regulated in conformity with Title X. of this book.

See Art. 556, and Tit. X. (*ante*).

390. The consignment note must be dated and signed by the consignor and must show :—

(1.) The nature, weight, measure or number of the things to be carried, and if in packages, also the character of the packages, and the numbers and letters and marks upon them.

(2.) The name and address of the consignor.

(3.) The name and address of the carrier.

(4.) The place of destination and the name of the consignee, stating whether the consignment note is to order or to bearer.

(5.) The fare or price of carriage and sums due to the carrier for extras for expenses anticipated or incurred.

(6.) The time within which the carriage should be performed, or in case of transport by railway whether by express or ordinary train.

(7.) Other conditions agreed on by the parties.

The consignor may name himself as consignee.

391. The consignor must deliver to the carrier the custom house and other necessary documents, and is responsible for their accuracy and regularity.

392. The carrier must if requested return to the consignor a copy of the consignment note signed by himself.

If the consignment note is to "order" or "bearer," the indorsement or transfer of the copy signed by the carrier transfers the control of the articles carried.

Conditions not appearing in the consignment note have no effect as against the consignee or the holder of a copy of it to "order" or "bearer" signed by the carrier.

393. If the carrier accepts the goods to be carried without reservation, it is presumed that there is no visible defect in the packages.

394. The carrier must forward the goods to be carried in the order in which he receives them, unless from their nature, destination or other reason it is necessary to do otherwise, or

unless he is prevented by accident or circumstances beyond his control (*forza maggiore*).

395. If the transit is stopped, or seriously delayed by an accident or uncontrollable circumstance, the carrier must at once give notice to the consignor, who may rescind the contract on payment of the expenses incurred by the carrier; if the hindrance happens in the course of the transit, the carrier has a right to a fare proportional to the distance accomplished. In these cases the copy of the consignment note to "order" or "bearer" signed by the carrier must be returned to him.

396. The consignor has a right to stop *in transitu* and to order the return of the goods or the consignment of them to a consignee different from the one named in the consignment note, or to otherwise dispose of them, but must refund to the carrier his expenses and compensate him for damages which spring directly from the countermand.

The duty of the carrier to follow the directions of the consignor ceases from the moment at which the goods, having reached their destination, the consignee in possession of a document in virtue of which he can demand delivery from the carrier, has made a demand or presented his consignment note. In these circumstances the consignee alone has power to dispose of the goods carried.

If the consignment note is to "order" or "bearer" the right referred to in the first part of this article pertains to the holder of the copy of the consignment note signed by the carrier, the latter on receiving a countermand has a right to have the said copy returned to him, and if the destination of the goods is altered may demand a fresh consignment note.

397. The period during which goods that are carried can be reclaimed, if not settled by the agreements between the parties or by by-laws, is determined by mercantile custom.

398. The carrier is responsible for the acts of his servants and of all other carriers in succession, and of every other person to whom he delegates the duty of carrying.

399. Each successive carrier in turn has a right to declare on the consignment notes or otherwise the condition of the goods carried at the moment at which he receives them.

Failing such declaration he is presumed to have received

them in good order and in accordance with the statements in the consignment note.

400. A carrier is responsible for the loss of or damage sustained by goods entrusted to him to carry from the time he receives them until he delivers them to the consignee, unless he proves the loss or damage to have been occasioned by accident, uncontrollable circumstances, inherent vice of the goods themselves or of their natural properties, or by the act of the consignor or consignee.

This article is expressly held to apply to carriage by sea, 23, 6, 93, C.A., Genoa. 10 R.I.D.M. 346.

401. If the contract is to carry special articles, fragile or perishable goods or animals, or the carriage is to be conducted in any special way, a railway company may stipulate that the loss or damage shall be presumed to have arisen from the inherent vice of the things carried, or from their natural properties, or from the act of the consignor or consignee unless it is proved to have been occasioned by their own default.

402. The extent of the damage is ascertained in the way prescribed in Art. 71 and the consignor, the holder of the consignment note and the consignee in accordance with the provisions of Art. 396, may be allowed by judicial authority to demand delivery of the goods carried either with or without security.

See Art. 554, 658 (*ante*).

403. In case of delay in executing the contract beyond the time specified in Art. 397, the carrier loses a portion of the fare proportional to the length of the delay, and he loses the whole fare if the delay exceeds twice the time agreed on for the transit, and also is bound to compensate any further damage that is shown to have arisen from the delay.

A carrier is not responsible for delay if he proves that it arose from an accident or circumstances beyond his control, or from the act of the consignor or consignee.

Want of sufficient means of transport alone does not excuse delay.

404. With respect to goods which from their nature sustain a loss of weight or measure during the transport, the carrier

can limit his liability to a certain percentage previously agreed and which must be fixed for each package if the goods are divided into separate packages.

This limitation is without effect if the consignor or consignee proves that the loss has not arisen in consequence of the natural qualities of the goods, or that in fact it has not reached to the stipulated amount.

405. The amount of damage arising from loss of, or injury to the goods is estimated at the price current of the goods carried at the time and place of delivery. This price current is determined in accordance with Art. 38, less expenses saved by the loss or injury.

If the damage has been caused by fraud or gross negligence the measure of compensation is determined in accordance with Arts. 1,227 and 1,229 of the Civil Code.

The measure of damage for the loss of a traveller's luggage delivered to the carrier without any statement of the contents is determined by the particular circumstances of the case.

406. A carrier is not responsible for valuables, money or documents of title unless they are declared, and in case of loss or damage is not bound to repay more than the declared value.

407. After the arrival of the goods carried, or after the day on which they ought to have arrived at their destination, the consignee may exercise all the rights growing out of the contract of carriage and bring action for compensation, and from this time he may demand delivery of the said goods and of the consignment note.

408. The carrier is not bound to deliver the goods carried if the consignee does not fulfil his obligations.

In case of dispute, if the consignee pays what he considers to be due, and at the same time places the difference on deposit the carrier must deliver the goods carried.

If the consignment note is to "order" or "bearer" the carrier may refuse to deliver if the copy signed by him is not restored to him.

409. The consignee is entitled on delivery to verify the condition of the goods at his own expense, even if they show no external marks of damage.

A consignee on receiving the goods is bound to pay what is due for carriage in accordance with the invoice and also expenses paid or incurred.

410. If the carrier delivers the goods carried without receiving the money due to him, and to the preceding carriers or to the consignor, or without requiring the sum in dispute to be placed on deposit, he loses his right to recover from them and remains liable to the consignor, and preceding carriers for the amount he had to obtain for them, he preserves, however, his right of action against the consignee.

411. Every demand for compensation must be made against either the first or the last carrier, it may, however, be made against an intermediate carrier when it is proved that the damage was sustained during the part of the transit he conducted. Any carrier called on to answer for acts which are not his own, may either claim over against the carrier immediately preceding him or against the intermediate carrier, who in accordance with the preceding clause is liable.

412. A carrier has a lien on the goods carried until they are delivered to the consignee for all debts arising out of the contract of carriage.

If there are several carriers the last exercises the rights of the preceding ones.

413. If the consignee cannot be found or if a dispute arises as to the delivery, the President of the Tribunal of Commerce, or the Prætor may order the said goods to be warehoused or attached. He may also have a survey held and order the sale of sufficient to satisfy the carrier's claim, following the direction of Art. 71. If there is no dispute the carrier may proceed in accordance with Art. 363 to obtain payment of what is due.

414. If the contract of carriage contains a penal clause for non-fulfilment or delay in delivery, the completion of the carriage and the penalty may always be demanded. Proof of damage is not necessary for the recovery of the penalty.

If it is proved that the damage sustained exceeds the penalty, the excess may be claimed.

If the carrier is not responsible in accordance with Arts. 400 and 403 the penalty is not recoverable.

415. The payment of the fare and acceptance without

reserve of the things carried, even when the payment has been made in advance are a bar to any action against the carrier.

Nevertheless an action against the carrier for partial loss or damage which could not be detected at the time of delivery is preserved after payment of the fare and receipt of the goods carried if it is proved that the loss or damage arose in the interval between delivery to the carrier and delivery to the consignee, and on condition that the demand for a survey is made as soon as the damage is discovered and not later than seven days after the receipt.

416. Stipulations excluding or limiting, in carriage by railway, the duties and liabilities laid down in Arts. 392, 393, 394, 400, 402, 403, 404, 405, 407, 408, 411 and 415 are null and void even if sanctioned by general or special by-laws, unless there is a diminution in the fare, charged in the general tariff and offered by a special tariff corresponding to the limitation of liability.

See Art. 491, 68 (*ante*).

TITLE XIV.

The Contract of Insurance.

CHAPTER I.

General Provisions.

Art. 417. A contract of insurance is one by which the insurer obliges himself for a premium to indemnify the assured against losses or damages which he may meet with in consequence of certain accidental or uncontrollable events.

H. 246. See note to Art. 640 (*ante*).
News. § 125; M. and P. 438; Arn. 15.

418. Marine insurances are specially regulated in the 2nd Book.

See Book II., Tit. VI. (*ante*).

419. Mutual Insurance Associations regulated by the provisions of Title IX. are also subject to those of this Title which are not incompatible with their peculiar nature.

See Title IX. (*ante*).

420. The contract of insurance must be in writing.

The policy of insurance must be dated, and must state:—

(1.) The name of the assured and his residence or domicile.

(2.) The name of the insurer and his residence or domicile.

(3.) The subject matter of the insurance.

(4.) The amount of money assured.

(5.) The premium of the insurance.

(6.) The risks taken by the insurer on himself and the time at which they commence and terminate.

G. 784; H. 255, 256; S. 737, 738.

News. §§ 182, 132, 134; M. and P. 447; Arn. 216, Pt. I., Ch. V.

421. If the policy does not declare that the insurance is contracted on behalf of another person or of the person whom it may concern [*per conto di chi spetta*] it is deemed to be made on behalf of the actual person who makes it.

The agent of an undisclosed principal is personally bound by the policy and cannot transfer to his principal without notice to the other parties C. A. Genoa 14 J.D.I.P. 102, and see Arts. 347, 380, 381 (*ante*). Cf. *Durant & Co.* v. *Roberts & Keighley Maxted & Co.* [1900], 1 Q.B.C.A., 629.

A managing owner binds his co-owner by an insurance effected by him in his own name, and if he is a member of a Mutual Insurance Society, the co-owners become liable as members also. 26, 5, 93, C.A., Genoa. 9 R.I.D.M. 626.

422. An insurer may re-insure with another person things which he has assured.

A person assured may insure the insurance premiums.

The transfer of rights as against the insurer is effected by a transfer of the policy accompanied by a declaration signed by the transferor and transferee. It is of no effect as against third parties unless notified to the insurer or accepted in writing by him.

Proof of interest need not appear in the policy, but cannot be transferred by delivery of the policy merely. 7 R.I.D.M. 708, C.A. Pal.

This Art. applies to marine policies. C.A. Messina 27, 12, 88, D.C. 89, 294.

G. 778, 889, 899; H. 267, 263, 256; S. 420, 847.

News. §§ 126, 127, 134, 184; M. and P. 443, 460, 461, 551, 549; Arn. 46, 93, 94, 97, 103.

CHAPTER II.

Insurance against Injuries.

SECTION I.

General Provisions.

Art. 423. Not only the owner but also a creditor who has a lien or mortgage, and, speaking generally, any one who has an actual and legal interest in, or is responsible for, the preservation of an article may insure it.

G. 778.
News. §§ 126, 129, 130; M. and P. 441, 442; Arn. 3, 50, 51.

424. An insurance against damage may be for the full value of the thing, or a portion of it, or for a definite sum. Any portion of a thing, or many things conjointly or separately, or everything collectively may be insured.

Anticipated profits or accruing rents in the cases allowed by law may be insured.

G. 786, 801, 802.
News. §§ 130; M. and P. 462; Arn. 35-37, 281, 313.

425. If an insurance against damage only covers a portion of the value of the thing insured, the assured sustains a proportional part of the damages and losses.

G. 792, 859.
News. § 176.

426. Where the total value of the things insured is covered by a former insurance, they cannot be insured over again for the same period and against the same risks.

The second insurance will, nevertheless, be effective:—

(1.) If made conditional on the nullity of the earlier insurance, or the complete or partial insolvency of the first insurer.

(2.) If some of the rights arising out of the first insurance are transferred to the second insurer or renounced by the first.

G. 782, 787, 789,
News. §§ 180, 184; M. and P. 461; Arn. 309, 310.

427. If the full value is not insured by the first contract,

insurers who have signed subsequent contracts are answerable for the excess (in value) in the order of date of the contracts.

All insurances made on the same day are deemed to be made simultaneously, and take effect up to the full value in proportion to the amount assured by each of them.

G. 782, 787, 788.

News. §§ 180, 184; M. and P. 461; Arn. 309, 310.

428. An insurance for an amount exceeding the value of the things insured is without any effect so far as the assured is concerned, if there has been fraud or bad faith on his part, and the insurer in good faith has a right to the premium.

If there has not been either bad faith or fraud on the part of the assured, the insurance is valid up to the value of the things insured; the assured is not obliged to pay the premium on the excess, but only owes a compensation equal to half the premium and not exceeding $\frac{1}{2}$ per cent. on the sum insured (See Art. 612, *ante*).

B. 188, 189, F. 357, 358, G. 786, 895, H. 615, 622, 253, S.752, 781, E. 199, 200.

News. §§ 133, 171-180; M. and P. 555-559; Arn. 284-289.

429. A false or mistaken declaration, and any concealment of circumstances known to the assured, render the insurance null when the declaration or concealment are of such a nature that the insurer would not, if he had known the true state of affairs, have made the contract at all, or would not have made it on the same terms.

The insurance is null although the declaration or concealment are in regard to circumstances which in fact have had no influence on the damage to or loss of the things insured.

If there has been bad faith on the part of the assured, the insurer has a right to the premium.

G. 806-809.

News. §§ 169-171, 178; M. and P. 516, 519-524; Arn. Pt. II., Chs. I. and II. Cf. *Seaton* v. *Burnand* [1900], A.C. 135.

430. An Insurance is null if the insurer, the assured, or the person making the insurance were aware of the absence or termination of the risk, or the happening of the damage. If the insurer only was aware of the absence or termination of the risk the assured is not obliged to pay the premium. If the

person assured knew that the damage had already happened, the insurer is not bound by the contract, but has a right to the premium.

This Art. applies to Marine Insurance. C. C. Turin 29, 4, 90, D.C'. 90, 541.

B. 196, F. 365, G. 896, S. 784, 787, H. 269, 270, 597, 598, E, 207, 208.

News. §§ 169-171, 178, 137; M. and P. 558; Arn. Pt. II., Chs., I, and II.

431. An insurance is not considered to have come into operation if the thing insured has not been at risk, but the insurer has a right to compensation, the amount of which is determined in accordance with the provision of the last clause of Art. 428 [*suprà*].

B. 177, F. 349, G. 894, H. 635, S. 784, E. 191.

News. §§ 177-180; M. and P. 555; Arn. 419, 10.

432. The liabilities of the insurer cease when any action of the assured changes or increases the risks by the alteration of material circumstances of such a description that if the new state of affairs had existed when the contract was made, the insurer would not have consented to the contract, or would not have consented on the same terms.

This provision is not applicable if the insurer has continued to carry out the contract after being aware of the alteration.

B. 182, 183, F. 351, 352, G. 814, 824, H. 638, 639, 643, 276.

News. §§ 142, 144, 166; M. and P. 474, 475, 453; Arn. 251, 417.

A proviso that a vessel shall be of a certain class is covered by the fact of her being of an equivalent class in another register. C. A. Genoa 9 R.I.D.M. 304.

A prolonged stay in a port of call vitiates a policy. C. C. Turin 28, 4, 97, 13 R.I.D.M. 219.

433. If the assured fails before the risk has terminated, and the insurer has not been paid the premium, he can require security, or in default of security, that the contract be rescinded [*scioglimento del contratto*]

The assured has a corresponding right if the insurer fails or goes into liquidation.

S. 787, G. 898.

434. The losses and damages which the things insured sustain in consequence of accidents, or uncontrollable circumstances of which the insurer has taken the risk, fall upon him.

An insurer is not responsible for losses and damages resulting exclusively from the inherent vice of the article insured and not declared, nor for such as are caused by any act or default of the assured or of his agents, factors, or servants [*committenti o commissionari*].

He is not responsible for the risks of, nor for damages caused by riots, unless so agreed.

When towage is necessary to avoid total loss the underwriters are liable for the whole; when the total loss is only probable the judge may apportion the towage charges. C. C. Turin, 5 R.I.D.M. 395.

B. 183, 185, F. 352, 355, G. 820, 821, H. 276, 641, 643-645, S. 755, 756, E. 194, 197.

News. §§ 148, 149; M. and P. 480-483; Arn. Pt. III., Chs. I. and II.

435. The indemnity to be paid by the insurer is regulated by the value of the things insured at the time of the disaster. If the value insured has previously been estimated, and agreed to by the insurer, he can impugn this value, in case of fraud, simulation, or falsification, without prejudice to other proceedings even of a criminal nature.

If no estimate of value has been accepted, the value of the things insured may be established by any legal means of proof.

Excepting in the case of the provisions made in respect to insurances against the risks of navigation, the assured has no right to abandon to the insurer things which remain or are saved from the disaster. The value of things which remain or are saved is deducted from the sum due from the insurer.

See Art. 612 (*ante*).

But an agreed estimate to repair damage does not prevent the assured from claiming more as necessary to restore or keep a vessel's class. 8 R.I.D.M. 607.

B. 169, 187, F. 336, 339, G. 793, 795, H. 619, S. 752, 754.

News. § 133; M. and P. 457, 458; Arn. 281, 285, 286.

436. The assured must give notice to the insurer within three days of the happening of the disaster or of its coming to his knowledge; he must, besides, do whatever he can to avoid or diminish the damage.

Expenses incurred for this object by the assured fall on the insurer, even though the amount of them added to that of the damage exceeds the sum assured, and though the object has

not been attained, if it is not shewn they were unreasonably incurred either in whole or in part.

G. 818, 819.

News. §§ 139, 171; M. and P. 490, 543; Arn. 854.

437. If the insurance be against damage or loss to movable chattels [*cose mobili*], payment of the indemnity made to the person insured frees the insurer when no objection is made to the payment.

See Art. 480 (*ante*).

438. An insurer who has paid over the damage to or loss on things insured is subrogated [*surrogato*] to all the rights which accrue to the assured against third parties in consequence of the damage. The assured is responsible for anything done by him which prejudices such rights.

If the damage has been made good [*risarcito*] only in part, the assured and the insurer act together to obtain their rights in proportion to what is payable to each.

G. 841, 859.

News. §§ 181, 183; M. and P. 527; Arn. Pt. III., Ch., IX.

439. In case of transfer of the articles insured, the rights and obligations of the preceding proprietor do not pass to the transferee, unless it has been so agreed.

News. § 131; M. and P. 442; Arn. 103.

SECTION II.

Certain Species of Insurance Against Damage.

440. *Relates to insurance of debts.*

441. Insurance against damage by fire includes all damage caused by fire however occasioned except such as arises from a guilty action (*colpa grave*) traceable to the assured, and except also the cases mentioned in the last clause of Art. 436.

It includes damages arising from the defective condition of insured building, even if not declared, unless it can be proved that the assured was aware of the defect at the time the contract was made.

442. The following are equivalent to fire damage unless otherwise agreed:—

(1.) Damage sustained by the property insured from a fire in an adjoining building or from measures taken to cut off or put out the fire.

(2.) Losses and every description of injuries sustained by goods insured whilst being moved with the object of getting them out of the reach of fire damage.

(3.) Damage arising from the insured building being pulled down with the object of checking or cutting off the fire.

(4.) Damage arising from being struck by lightning, from explosions and other such like accidents even when not caused by a fire.

443. The risk of the insurer against fire damage commences at noon on the day following the date of the policy, unless otherwise agreed.

444. The damage occasioned by the burning of a building is estimated by taking the difference between the value of the building prior to the accident and of what remains after it.

Arts. 445, 446 *relate to special descriptions of insurance of growing crops, etc.*

447. Insurance of goods carried may be for their value and necessary expenses as far as their destination, and the profits anticipated from the higher price that they will fetch at the same place.

If the anticipated profits are not clearly stated in the policy, they are not included in the insurance.

G. 799-804.

News. §§ 130 (4), 133, M. and P. 462, Arn. 23-29, 35-37, 65.

448. The risk of an insurer of goods carried begins from the moment at which the goods are delivered for carriage, and continues up to the moment of delivery at their destination, unless otherwise agreed.

G. 824.

A temporary interruption of the carriage, or a change of route agreed on by the parties, or a change of the method of forwarding do not free the insurer from the risk if they are necessary for the performance of the carriage. C.C. Turin, 8 R.I.D.M., 418.

News. §§ 146, M. and P. 474, 475, Arn. Pt. I., Ch. IX.

APPENDIX B.

CIVIL CODE.

Preliminary Disposition.

Art. 3. In the application of the law no other meaning is attributed to it than the plain signification of the words, according to the context and the intention of the Legislature.

When a suit cannot be determined by any actual law, recourse must be had to the provisions made in similar cases on analogous matters; where there is still a doubt the decision must be given in accordance with the general principles of right.

7. Chattels are subject to the national law of the owner unless it contradicts the law of the State in which they are found.

Real property is subject to the law of the State in which it is situated.

See Co. Com., Art. 480 (*ante*).

9. The essential form of deeds between living persons and of wills are determined in accordance with the law of the place where they are executed. But the testator or contracting parties may follow the law of their own State when it is common to all parties. The substance and effect of legacies and other testamentary dispositions are regulated by the testator's national law. The substance and effect of obligations are deemed to be governed by the *lex loci contractus*, and if the contracting parties are foreigners belonging to the same country by their national law, saving in all cases an expression of a different intention.

See Co. Com., 557 n. (*ante*); Co. Civ., Art. 1,134 (*post*). This applies the law of the place within the territorial waters of which a collision happens to the effects of the collision, 5, 6, 99. Trib. Civ., Naples, 15 R.I.D.M. 524.

10. Competency and form of procedure are regulated by

the *lex fori*. Methods of proof are regulated by the *lex loci contractus*. Foreign judgments in civil suits can be executed within the State when rendered executive in the way laid down by the Code of Civil Procedure, unless otherwise regulated by Treaty. Methods of execution of deeds and judgments are regulated by the law of the place of performance.

Book I.

Of Persons.

Title IX.

Minors, Guardianships, and Coming of Age.

Chapter II.

Guardianships.

Section II.

Family Councils.

Art. 262. Boys admitted into asylums for any reason and under any name, who have no known relatives capable of the functions of guardian, are entrusted to the governing body of the Asylum in which they are found, which form for them a council of guardianship without the intervention of the magistrate, and may, if circumstances require, elect one of the governing body to exercise the functions of guardian.

See Mer. Mar. Co. 73 (*ante*).

Book III.

The Methods of Acquiring and Transferring Property and other Rights over Things.

Title I.

Occupation.

Art. 718. The owner (of lost property) must pay as a reward to the finder, if required, a tenth part of the amount or of the value of the article he has found. But if such amount or value exceeds 2,000 lire (about £80 at par) the reward on the excess will be only a twentieth.

Mer. Mar. Co. 135 (*ante*).

Book III.

Title IV.

Liabilities and Contracts Generally.

Chapter I.

The Basis of Liability.

Section I.

Contracts.

Art. 1,108. Consent is not valid if given in error, extorted by violence, or obtained by fraud.

1,109. An error of law only annuls a contract when it is as to the only or main cause of the contract.

1,110. An error of fact does not annul a contract unless it is as to a matter which is the essence of the contract. It does not produce a nullity when it affects only the person contracted with, unless the status of the person with whom it is intended to contract is the main cause of the contract.

Art. 486, *n.*

1,134. An ambiguous term is interpreted in accordance with the practice of the country in which the contract was made.

Art. 557, *n.*

Section III.

Delits and Quasi Delits.

1,153. Every one is liable not only for damage done by by himself, but also for that occasioned by the act of persons for whom he is responsible, or by things of which he is in charge.

. . . . . .

Masters and their representatives for injuries occasioned by their servants and agents in the exercise of the duties in which they are employed.

. . . . . .

The liability above specified ceases when . . . the employer . . . proves that he could not possibly prevent the act for which he is *primâ facie* liable.

CHAPTER II.

Different Sorts of Obligations.

SECTION I.

Conditional Obligations.

Art. 1,162. A contract containing a condition which makes its performance depend on the mere will of the contractor is null.

CHAPTER III.

The Effect of Obligations.

Art. 1,227 Damages are as a rule due to a creditor for loss sustained and for profits he has lost with the modifications and exceptions specially laid down.

See Co. Com., Art. 405.

1,229. When the non-fulfilment of a contract arises from the fraud of the debtor, the damages relating to the loss sustained by the creditor, and the profits of which he is meanwhile deprived must not be extended to those which are not the direct and immediate consequence of the non-fulfilment.

See Co. Com., Art. 405,

CHAPTER IV.

The Extinction of Obligations.

SECTION VII.

Proceedings to declare void and set aside.

Art. 1,309. *This article refers only to technical proceedings in the course of an action to set aside a contract.*

See Art. 916.

CHAPTER V.

Proof of Obligations and their Extinction.

SECTION I.

Documentary Evidence.

Art. 1,314. The following must be proved by public or private deeds under pain of nullity.

(1.) Agreements to transfer real property or other property or rights subject to mortgage, except revenues of the State.

(2.) Agreements to make or modify easements or rights to use or inhabit or which transfer the exercise of the rights over crops.

(3.) Documents renouncing the rights mentioned in the two preceding paragraphs.

(4.) Leases of real property for terms exceeding nine years.

(5.) Contracts of partnership having for their object the enjoyment of real property, when the partnership is indeterminate in length or exceeds nine years.

(6.) Deeds conferring an income either perpetual or for lives.

(7.) Transfers (*transazione*).

(8.) Other matters specially referred to (a long list of numbers are set out of which code of Commerce 288, 316, 381, 426, 446 are all that are important here).

See Co. Com., Art. 44,

Chapter V.

Proof of Obligations and of their Extinction.

Section II.

The Evidence of Witnesses.

Art. 1,341. Oral evidence alone cannot establish an agreement respecting anything of greater value than 500 lire (say £20) even in cases of gratuitous bailment. It is never admissible as against or to extend what is contained in deeds, nor, except to explain the state of affairs previously, at the time or subsequently, even where the agreement relates to a smaller sum than 500 lire.

Nevertheless what is laid down in the law relating to commerce remains of full force.

See Co. Com., Art. 53 (*ante*).

SECTION III.

Presumptions.

SECTION II.

Presumptions other than those of Law.

1,354. Presumptions, which are not laid down by law, are left to the discretion of the judge; he will only admit presumptions which are very strong, precise and supported by the circumstances and only in those cases in which personal testimony is allowed.

See Co. Com., Art. 53 (*ante*).

TITLE VI.

Sales.

CHAPTER IV.

Duties of Vendors.

SECTION II.

Warranty.

Art. 1,486. It is competent to a person dispossessed by judicial decree whether he was given a guarantee or nothing was said about it to demand from his vendor

(1.) The restoration of the purchase money.
(2.) That of produce which he has been compelled to restore to the proprietor who has reclaimed the property.
(3.) Expenses incurred in consequence of legal proceedings both by and against him.
(4.) Finally the repayment of damages, as well as expenses and all proper payments about the contract.

See Co. Com., Art. 486 (*n*) 518 (*ante*).

TITLE IX.

Contracts of Letting and Hiring.

CHAPTER III.

Hiring of Work and Labour.

Art. 1,627. There are three principal descriptions of hiring of work and labour.

(1.) That by which a person contracts to render his own personal services to another.

(2.) That of carriers either by land or water who undertake the transport of passengers or goods.

(3.) That of contractors to do work by the piece or job.

1,641. The person who gives an order may free himself, if he pleases, from its performance even though the work has been commenced, by indemnifying the person who undertook it for all expenses, for all labour and for all profits he might have made out of the undertaking.

See Co. Com., Art. 482 (*ante*).

1,642. A contract for personal service is dissolved by the death of the artisan, architect, or (other) under-taker.

See Co. Com., Art. 482 (*ante*).

1,643. But the hirer is bound to pay to the workman's heirs the proper proportion of the price agreed upon for the work done and for materials prepared, but only when these works and materials can be made use of by him.

See Co. Com., Art. 482 (*ante*).

TITLE XVIII.

Payments into Court and Attachments.

CHAPTER II.

Attachment.

SECTION III.

Judicial Attachments and Payments into Court.

Art. 1,875. In addition to the cases provided for in the Code of Civil Procedure, a judicial authority may order an attachment.

(1.) Of real property or a chattel the property in which, or the possession of which is in dispute between two or more persons.

(2.) Of things which a debtor offers to obtain his release.

TITLE XXIII.

Privileged Debts and Hypothecations.

Art. 1,948. Every one who is personally liable is bound to the performance of his contract to the whole extent of his property real and personal, present and future.

See Co. Com., Art. 666.

1,950. Privileged debts and hypothecations confer a legal

. . . . . .

right of priority.

1,951. If the articles subject to the privilege or hypothecation are destroyed or injured, moneys, due from an insurer as an indemnity for the loss or damage, are bound for the payment of creditors having a privilege or hypothecation in their proper order unless the same are specially pledged to repair the loss or damage.

Insurers are free from further liability who pay, after 30 days have elapsed, for the loss or damage without any opposition (*i.e.* on the part of creditors). Moneys due on account of compulsory purchase for public works or from uses imposed by law are also bound for the payment of such debts.

See Co. Com., Art. 679, *et seq.*

CHAPTER I.

Privileged Debts.

Art. 1,952. A privileged claim is one which has a legal right of priority over the thing to which it attaches.

See Co. Com., Art. 666.

1,953. A privileged debt has priority over all other debts, even hypothecations.

When there are several privileged debts the legal priority is determined by the description of the privilege.

1,954. Debts which are equal in privilege share in proportion to their amount.

SECTION I.

Privileged Claims against Personal Property.

1,955. Privileged claims against personal property are general or special. The former attach to all the personal property of the debtor, the latter to specific articles.

SECTION I.

General Privileged Claims against Personal Property.

1,956. The undermentioned debts are privileged against all personal property in the following order.

(1.) Law costs incurred in protecting the rights of the creditors in common, and in obtaining execution against the personal property.

(2.) Funeral expenses that are needed in accordance with custom.

(3.) Medical treatment of the debtor for the last six months of his life.

(4.) Provisions supplied to the debtor and his family for the last six months and wages of those in his employ for the same time.

1,957. Arrears of taxes for the current and preceding years, including district and provincial imposts have also a privilege. This privilege does not include land tax.

SECTION II.

Privileged Claims against Specific Articles.

1,958. *This long article deals almost entirely with agricultural affairs, only one sub-section could concern Maritime affairs, which is as follows.*

(9.) The cost of carriage, customs and tolls against the goods carried so long as they remain in the hands of the carrier or consignee, and in the latter case if proceedings are taken within three days.

SECTION III.

Priorities of Privileged Claims on Personal Property.

1,959. The law costs mentioned in (Co. Civ.) 1,956 (1) have priority over all special privileged claims pointed out in (Co. Civ.) 1,958.

The other ordinary privileged claims mentioned in the said article (Co. Civ.) 1,956 have priority over the ordinary privileged claims in (Co. Civ.) 1,957, and both sets have priority over the particular privileged claims enumerated (Co. Civ. 1,958, 2, 3, 4,), but are postponed to the other privileged claims mentioned in that article.

SECTION I.

Privileges on Chattels.

SECTION III.

Ranking of Privileges on Chattels.

1,960. If there are different claims having a special privilege upon one or more chattels, priority is given in the following order:—

Debts to the State are preferred to any other debt secured on a chattel that is subject to the taxes mentioned in (Co. Civ.) 1,958 (1). *These are Custom House and registration dues and the like, then follow other matters connected with agriculture. The article concludes with reference to (Co. Civ.)* 1,958 (8, 9) *by stating that a carrier's privilege* (9) *for three days after he has delivered the goods takes priority over an inn-keeper's* (8) *lien on the goods of his guests.*

See Co. Com., Art. 666.

TITLE XXVIII.

Prescription.

CHAPTER III.

Causes which stay Prescription.

Art. 2,123. A prescription may be interrupted either by natural or legal causes (*civilmente*).

Section III.

Short Prescriptions.

2,141. Prescriptions exist in the above cases (so far as the Commercial Code is concerned for work and labour), although the attendance, services or labour are continued.

It is not interrupted except by a recognition of the debt in writing or a legal application.

See Co. Com., Art. 916.

APPENDIX C.

CODE OF CIVIL PROCEDURE.

Book I.

Title II., Chapter I.

Competency of Courts.

Section IV.

Rules Concerning Foreigners.

Art. 105. A foreigner who is not resident within the realm may be sued in the courts of the realm although he be not present.

(1.) If the case relates to real or personal property within the realm.

(2.) If it relates to obligations arising out of contracts or things done within the realm or which ought to be done within the realm.

(3.) In all other cases in which there is reciprocity (that is as to foreign states).

106. In addition to the cases mentioned in the preceding article, a foreigner may be sued in the courts of the realm, on contracts made abroad.

(1.) If he is resident in the realm even though not actually there.

(2.) If he is within the realm so as to be personally served, even though not resident.

107. When a foreigner has neither residence, temporary abode nor domicile of election within the realm, but has agreed on a place (within the realm) at which the contract has to be carried out, an action *in rem* or personal action in relation to personal property is carried on in the place of the plaintiff's domicile or residence.

TITLE III.

Citations.

CHAPTER I.

Form of Citation.

Art. 141. A person who has no domicile, residence or known abode is cited.

By posting up a copy at the outer door of the tribunal before which the suit is instituted.

By inserting a summary of the citation in the newspaper which contains legal notices.

And delivering a copy of the citation to the public officer attached to the civil tribunal within whose jurisdiction the said court sits.

142. A person who has no domicile, residence or abode within the realm is cited in the manner prescribed by the preceding Art. The public officer forwards his copy of the citation to the Minister of Foreign Affairs. When the person to be cited has a general agent within the realm he may be cited through service on such agent.

CHAPTER II.

Appearance.

Art. 147. The time limited for appearance before official arbitrators or Prætors cannot be less than—

(1.) Two days if the place where the citation is served and that in which the defendant must appear are in the same commune.

(2.) Three days if the place where the citation is served and that in which the defendant must appear are in different communes of the same district government.

(3.) Four days if the place of service and that of appearance are in adjoining district governments.

(4.) Six days if the place of service and that of appearance are in district governments which though not adjoining one another are within the jurisdiction of the same civil tribunal.

(5.) Ten days if the place of service and that of appearance

are in adjoining civil jurisdictions or within the jurisdiction of the same Court of Appeal.

In all other cases the time for appearance before arbitrators and Prætors is regulated by clauses (4) and (5) of the next article.

148. The time for appearance in civil and commercial tribunals and Courts of Appeal is at least—

(1.) Ten days if the place of service and of appearance are in the same commune or same local government.

(2.) Twelve days if in different communes and local governments but within the jurisdiction of the same court.

(3.) Fifteen days if within the jurisdiction of adjoining courts and of the same Court of Appeal.

(4.) Twenty days if within the jurisdiction of courts which though not adjoining one another are within the jurisdiction of Courts of Appeal which do adjoin one another.

(5.) Twenty-five days in all other cases except those for which longer terms are allowed under Art. 150.

When the dispute relates to Bills of Exchange, notice to order the crews, provisions, fittings, repairs to vessels ready for sea, or other maritime disputes, the citation may be made summarily, and in that case the time for appearance is that laid down in the preceding articles.

149. Local governments separated by the sea are not deemed to be adjoining (*limitrofe*).

150. The time for appearance in a court within the realm from an adjoining State is 40 days; from a European State, not adjoining, 90 days; from a non-European State, 180 days.

154. In cases which require special expedition, the arbitrators, Prætor, president of the tribunal or of the court, may shorten the time laid down in Arts. 147, 149 and 150, and may allow a summary citation and in the case referred to in Art. 147 (1) for a specified hour of the same day. The time prescribed by sub-sections (2), (3), (4), (5) of Arts. 147 and 148 and by Art. 150 cannot be reduced by more than one half.

Arbitrators, Prætors and presidents give leave by an order in the original citation, and state the time granted for service and appearance, if the citation is summary. The order is copied in the copies of the citation for service.

TITLE IV.

Procedure.

CHAPTER I.

SECTION VII.

Limitation of Time.

Art. 338. Proceedings are barred by the lapse of three years in which no step has been taken.

Proceedings are also barred when no demand has been made for a judgment by default within the time limited by Art. 383 (generally sixty days).

CHAPTER III.

Proceedings in the Tribunal of Commerce.

Art. 393. The plaintiff must in the citation give an address for service in the commune in which the court, in which he proceeds, has its seat, and that of the place of office of which he gives the address. If the plaintiff resides in the said commune he need only state the house in which he lives.

Within the time limited by the citation, the plaintiff must file in the registry, the documents, in support of his claim, on which he relies.

394. Within five days next following the time limited by the citation the defendant must give notice to plaintiff at his address in accordance with the preceding article of his appearance to defend, mentioning the proof on which he relies and filing a copy of this and of the citation in the registry.

In his appearance the defendant must in like manner give an address for service.

400. At the hearing of the case, the plaintiff states his case the defendant corrects his statement, each states the law on which he relies and argues upon it.

The proceedings are filed in the registry under the seal of the court.

401. The tribunal can always require the parties to appear in person either in court or chambers, and may, when necessary, appoint a judge to draw up a report on the declarations of the parties.

409. Decrees, whether after appearance or in default, may in all cases on the application of a party be made provisionally executive, notwithstanding a defence or appeal, and either with or without bail.

CHAPTER IV.

Summary Proceedings.

Art. 413. Although a suit is commenced by summary proceedings the court may order it to be prosecuted in regular form if the nature or any special circumstances in the case require it.

CHAPTER V.

SECTION V.

Procedure in all Courts.

Art. 447. *This article relates to proceedings before the Prætor, and the first clause mainly refers to previous articles and then proceeds.*

A suit is barred for want of prosecution after the lapse of a year from the last step.

CHAPTER VI.

SECTION IV.

Procedure in all Courts.

Art. 464. *This article relates to proceedings before official arbitrators, and the first clause refers to previous articles and then proceeds.*

A suit is barred for want of prosecution after the lapse of six months from the last step.

BOOK II.

TITLE II.

Arrest, Attachment, and Execution.

CHAPTER I.

Preliminary.

Art. 578. When there is reason to fear that damage may accrue through delay, the Prætor may permit an immediate

attachment after notice of the writ of execution or of the sentence referred to in Art. 565. The authorisation is endorsed in the writ and is entered on the report of the attachment. It is not subject to appeal.

Permission may be given by the official arbitrators of the commune in which the writ is to be executed if there is no Prætor in the place.

Art. 565 does not relate to maritime matters.

Chapter III.

Attachment, Custody of Property.

Art. 597. A report of the attachment must be made at the place where it is effected and must contain—

(1.) A statement of the place, year, month, day and hour, and of any postponement to another day and hour.

(2.) The proper and surname and domicile or residence of the plaintiff, with a statement if he acts personally or through an agent, and if the latter is the case, the proper and surname of the agent and the date and nature of his agency.

(3.) The proper and surname of the person effecting the arrest and of the witnesses of it, giving the ages and residences of these latter.

(4.) The proper and surname of the defendant and a statement whether or no he is present at the arrest.

(5.) The date of the claim and judgment rendering it executive and the amount for which execution issues.

(6.) A description of the method by which the arrest is carried out.

(7.) An exact and distinct inventory of the articles seized and if they are trade goods, a statement of quality, quantity, weight and measure.

Then follow certain special rules for seizure of jewellery and other valuable articles not relating to maritime affairs.

(8.) An approximate valuation of the things seized as settled by the officer arresting.

Things cannot be duly seized unless a declaration is made. The statement is signed by the parties, if present, the officer and the witnesses; if the seizure is not all made all at one time the statement must be re-signed on each occasion of acting.

CHAPTER VII.

Enforcement of Liens.

Art. 647. Any person claiming the property in or any lien upon the whole or part of the attached goods, may cite the plaintiff's creditor before the Prætor who has the control of the sale, oppose his claim and claim a delivery to himself of that which he claims. The citation must give an address for service or a declaration of actual domicile or residence in accordance with Art. 563.

The Prætor orders a suspension of the sale with or without bail from the claimant, according to circumstances, for expenses and damages, and decides the question if it is within his jurisdiction, as to amount, if not he transfers the case and sends the parties before the civil tribunal.

Arrangements for the suspension of the sale are notified to the attaching creditor, to the defendant and to the officer in charge of the proceedings for sale. The notice is equivalent to citation to appear at the hearing. If the claim of the intervener is rejected, he is liable, in addition to expenses and damages, to a fine not exceeding 300 lire (say £12).

Co. Com., Art. 921 (*ante*).

TITLE XI.

Attachments, Injunctions and Mandamus.

CHAPTER I.

Attachments.

SECTION I.

Judicial Attachments.

Art. 921. In addition to the cases enumerated in Art. 1875 of the Civil Code, the judicial authority may on demand of an

interested party order the attachment of a chattel or of real property when there is danger of its alteration, abstraction or deterioration.

Co. Com., Art. 921 (*ante*).

SECTION II.

Preservative Attachment.

924. A creditor who has good reason to fear the flight of his debtor or abstraction (of the property), or is in danger of losing the security for his debt, may require the attachment of portable property and of the sum due from the debtor if the pledge is not prohibited by law.

TITLE XII.

Execution of Foreign Judgments.

Art. 941. Foreign judgments are given executive force by the Court of Appeal by which the jurisdiction must be exercised after a hearing in which the court examines

(1.) If the judgment was pronounced by a competent court.
(2.) If the parties were properly summoned before the court.
(3.) If the parties were properly represented or legally in default of appearance.
(4.) If the judgment contains provisions contrary to public policy or the municipal law of the realm.

942. The application for examination is promoted by a citation of the parties concerned summarily and a notification to the public administrator. The party applying must prove the judgment in due form. If the execution of a judgment be demanded by course of diplomacy and the party concerned has not got a representative to move for the hearing, the Court of Appeal, at the instance of the public administration, will name a representative to the said party who will carry on the proceedings in the name of the law.

Italian Courts do not agree as to whether the absence of reasons for a judgment render it only informal or a nullity as being contrary to public

policy, *Ancona* and *Rome* adopt the latter view and *Genoa* and *Lucca* the former. The Courts of Cassation at Rome and Palermo will not grant execution of a foreign judgment by default. The Court of Cassation of Palermo, 5 R.I.D.M. 396, 9 R.I.D.M. 288, however, limits its refusal to grant execution on a foreign judgment, by default, in cases when under similar conditions an Italian Court would have been incompetent to pronounce it, and when the Italian subject has not consented. 9 R.I.D.M. 308. The fact that the case of one party is not mentioned in the foreign judgment does not render the judgment invalid if it appears from the judgment that the case was considered. C. A. Genoa, 11 R.I.D.M. 659.

The party applying for execution on a foreign judgment must not only prove the judgment to be in due form, but also the competence of the court, such competence cannot be presumed. C. A. Genoa, 11 R.I.D.M. 476.

The courts will not allow a new case of which the Court of Appeal would not have had original cognisance to be joined to an action on a foreign judgment. C. A. Genoa, 11 R.I.D.M. 476.

943. In the execution of foreign attachments within the realm the rules of the two preceding articles will be observed so far as they are applicable.

The Italian court will re-arrest an Italian ship arrested by a foreign court, and which has got away to Italy, on proof that the original arrest was regular. C. A. Genoa, 11, 12, 93, 26 J.D.I.P. 191.

945. Judgments and orders of foreign courts relating to the examination of witnesses, experts, administration of oaths, interrogatories and other interlocutory proceedings within the realm, are given executive force by a decree of the Court of Appeal, obtained *ex parte* in the place where the proceedings are to be carried out.

If the request is made by the party interested, he merely applies to the court with a verified copy of the judgment or order in the matter. If the request is made by the foreign court, it must be communicated by way of diplomacy without any necessity for the judgment or order to be attached to the request.

The court will consider the matter *in camera*, on hearing the government official, if it allows the execution of the order, it will give the order to the proper judge or official to carry out and render it operative.

Law of 25th January, 1888, abolishing tribunals of commerce and relegating the matters of which they have cognisance to civil and criminal tribunals.

1. Tribunals of commerce are abolished. The matters of which they take cognisance are transferred to the civil and criminal courts to be conducted in accordance with the rules laid down in commercial matters.

4. The present law comes into operation on 1st April, 1888.

The other sections relate to employment, transfer and retirement of salaried judges and officials of the courts and are therefore not of importance here.

FINIS.

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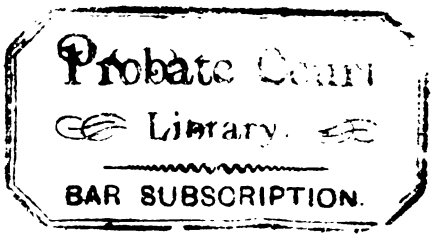

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